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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF : Case No. G-862/G-863
GLENMONT LAYHILL ASSOCIATES : OZAH No. 12-16
:
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A hearing in the above-entitled matter was held on
April 16, 2012, commencing at 9:36 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Lynn Robeson, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

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ON BEHALF OF THE OPPOSITION:

Richard Kauffunger
2309 East Gate Drive
Silver Spring, Maryland 20906

Max Bronstein
2925 Birchtree Lane
Silver Spring, Maryland 20906

WITNESSES:

Page:

Ed Axler - For Applicant
Expert in Land Planning
878 Georgia Avenue
Silver Spring, Maryland 20910

5-132

Khalid Afzal - For Applicant

104-107

Nancy Randall - For Applicant
Wells & Associates
170 Jennifer Road, Suite 260
Annapolis, Maryland 21401

132-157

ALSO PRESENT:

Vicki Vergagni
Russ Gestl
Jimmy Roenbyce
Pete Tenney
Michael Brown

P R O C E E D I N G S

MS. ROBESON: This is a public hearing in two local map amendments, both filed by Glenmont Layhill Associates, Local Map Amendment No. G-862 which is stage 1 -- excuse me, they won't pick it up if you're talking so -- a request to rezone from the RT-12.5, R-30 and O-M Zones to the TSR Zone a property known as Parcel A, Glenmont Park, Plat Book 76, Plat 7512; Parcel B, Glenmont Park; Parcel C, Glenmont Park; Parcels D and F, Glenmont Park; Resubdivision Plat Parcel G, Glenmont Park; Parcel E, Glenmont Park; and lots 1 through 49 and Parcels A through F, Block 1, Glenmont Mews, located at the intersection of Georgia Avenue and Glenallan Avenue consisting of 23.8810 acres in the 13th Election District.

The second local map amendment is No. G-863 which is stage 2, a request to rezone from the R-30 Zone to the TSR Zone property known as Parcel A, Glenmont Park; Parcel B, Glenmont Park; and Resubdivision Plat G, Glenmont Park, located at the intersection of Georgia Avenue and Glenallan Avenue, Silver Spring, consisting of 7.0514 acres in the 13th Election District.

Welcome back, everyone. We are here today to permit -- Mr. Kauffunger requested cross-examination of Mr. Ed Axler, transportation staff, on his staff report. That is the sole purpose of this hearing so we are going to limit

1 it to that issue only today with the ability of the, with
2 the ability of the applicant to put on rebuttal testimony
3 based on Mr. Axler's report.

4 Mr. Bronstein, did you have a question?

5 MR. BRONSTEIN: The question is whether I may ask
6 a question or two when Mr. Kauffunger has finished.

7 MS. ROBESON: Yes.

8 MR. BRONSTEIN: Thank you.

9 MS. ROBESON: Will the parties please identify
10 themselves for the record.

11 MR. ROBINS: Good morning. Steve Robins with the
12 Law Firm of Lerch Early & Brewer representing the applicant.

13 MS. ROBESON: Okay.

14 MR. O'NEIL: Patrick O'Neil of the Law Firm of
15 Lerch Early & Brewer as well representing the applicant.

16 MS. ROBESON: Okay.

17 MR. AXLER: Edward Axler, Park and Planning, Area
18 2, Transportation Planning, here to testify.

19 MS. ROBESON: Thank you, Mr. Axler. I do
20 appreciate your appearance here.

21 MR. KAUFFUNGER: Richard Kauffunger in opposition
22 to the applications.

23 MS. ROBESON: Okay. And Mr. Bronstein.

24 MR. BRONSTEIN: Max Bronstein representing the
25 Strathmore-Bel Pre community and myself in this matter.

1 MS. ROBESON: Okay. Mr. Axler, you were not here
2 previously. The testimony is sworn and as you know, subject
3 to cross-examination. If you could raise your right hand.

4 (Witness sworn.)

5 MS. ROBESON: Thank you. And just as a reminder,
6 all the other witnesses that were here previously are still
7 under oath. All right. Mr. Kauffunger, it's your time to
8 ask questions of Mr. Axler.

9 CROSS-EXAMINATION BY MR. KAUFFUNGER

10 BY MR. KAUFFUNGER:

11 Q Ed, I've asked you to be here today for several
12 reasons because there are aspects of the staff report that
13 to me, don't make sense, okay, and that they don't match the
14 evidence that's been submitted into the record. And you
15 were requested to attend because Mr. Afzal and Mr. Brown
16 both said you were the only one that knew anything about
17 traffic when we got together back in January.

18 Just to start off, could you give us some of your
19 background, your education, experience, special training?

20 A I've been -- I worked for the Maryland Park and
21 Planning Commission for 27 years as a transportation
22 planner. I have a master, a bachelor's and a master's in
23 civil engineering specializing in transportation and I'm a
24 registered professional engineer in Maryland.

25 Q Okay. Thank you. Have you read the District

1 Council's Resolution 16-424, which was adopted on January
2 15th, '08?

3 A Yes.

4 Q Are you familiar with the weaknesses and flaws in
5 the applicant's traffic study of April 2007?

6 A I'm aware of the concerns that was brought up in
7 the remand order, yes.

8 Q Can you just review some of those for us?

9 A Want me to pull it out?

10 Q Yes. And did you review that study at all? I
11 mean, previously or just as at this time?

12 A Are you --

13 Q Well, let me ask, let me let you finish your
14 answer to the previous question.

15 A You're referring to the remand order, correct?

16 Q Right.

17 A The one that asks the two questions, a queuing
18 analysis for Randolph Road and Georgia Avenue under the
19 methodology and standards outlined in part VA of the local
20 area view guideline, adopted and --

21 Q I'm not asking about what the Office of Zoning and
22 Administration sent out. I'm asking you specifically
23 whether or not you had read the resolution and
24 specifically --

25 A That?

1 Q Yes. The weaknesses and flaws that were
2 identified in that document.

3 A I remember reading it and I'm aware of the issues,
4 but I don't remember reading it word for word. I am well
5 aware of the issues associated with it.

6 Q Okay. So then you're aware that Mr. Hedberg, the
7 traffic engineer for the applicant in the first go-around,
8 testified on cross-examination that CLV analysis only
9 measures conflicting movements that go through an
10 intersection.

11 A Correct. CLV measures the, a vehicle through an
12 intersection.

13 Q And further, that Mr. Hedberg acknowledged that an
14 intersection with heavy congestion may not have a high CLV
15 because the congestion limits the number of vehicles that
16 can go through.

17 A That's generally a true statement.

18 Q And when you say generally a true statement,
19 people in the profession recognize then that the CLV
20 technique has serious limitations, particularly when used at
21 an intersection that is already congested?

22 A The CLV is, has limitations if the whole roadway
23 network is oversaturated and the upstream in traffic flow is
24 restricted, is restricted and therefore, reduces the amount
25 of traffic coming downstream into the intersection, or --

1 yes. If there's an upstream congestion problem, it would,
2 wouldn't, it wouldn't reflect the whole network traffic
3 flow. Is that where you're heading?

4 Q Well, what I'm -- not where I'm heading. It's
5 where I'm actually selecting some statements in the District
6 Council's resolution. For instance, on that same page, they
7 found more persuasive than the theoretical discussion of the
8 limitation of the CLV as a technique is the overwhelming
9 evidence that the intersection --

10 MS. ROBESON: Okay. Mr. Kauffunger --

11 MR. ROBINS: He's testifying.

12 MR. KAUFFUNGER: I'm not testifying. I'm reading
13 from the document.

14 MS. ROBESON: I know, but is there a question in
15 there?

16 MR. KAUFFUNGER: Well, let me finish.

17 BY MR. KAUFFUNGER:

18 Q Whether or not --

19 MS. ROBESON: Well, okay. Go ahead.

20 MR. KAUFFUNGER: I'll phrase it a different way
21 then.

22 BY MR. KAUFFUNGER:

23 Q Have you visited this intersection?

24 A Yes.

25 Q In the last year?

1 A I think so. I visit a lot of intersections.

2 Yeah. Most likely.

3 Q Are you -- well, I'll put it another way.

4 A I'm familiar with the intersection, yes.

5 Q You're familiar with this intersection over a
6 period of time, let's say going back as far as four years?

7 A I'm generally familiar with the intersection, yes.

8 Q This intersection. These intersections in the
9 Glenmont area.

10 A I'm familiar with the intersection. I visit lots
11 of intersections. I do lots of studies and I can't recall
12 when I visit everything but, yes, I'm familiar with these
13 intersections.

14 Q Okay. In the Glenmont area.

15 A Yes.

16 Q And you have witnessed, as was discussed in the
17 remand resolution, that there, there's overwhelming evidence
18 that the intersection at Georgia Avenue and Randolph is
19 seriously congested with lengthy backups.

20 MR. ROBINS: Objection. He's testifying. Put
21 something in the form of a question.

22 MS. ROBESON: I think he did.

23 MR. KAUFFUNGER: I thought I did.

24 MS. ROBESON: Yes. Can you -- I think it would be
25 helpful, rather than we -- well, go ahead but in the

1 interest of time, you may want to paraphrase the resolution
2 instead of reading it but go, why don't you go ahead.

3 MR. KAUFFUNGER: Well, I don't want to make it
4 into my own words okay?

5 MS. ROBESON: Okay. All right. That's fine. Go
6 ahead.

7 BY MR. KAUFFUNGER:

8 Q Mr. Hedberg testified then that in two of his
9 three peak hour visits to the intersection, the worst backup
10 he saw on Georgia Avenue was approaching the Layhill
11 intersection. Is that something that you've witnessed?

12 A Well, let me paraphrase it. Let me say something.
13 David Paine worked on this case in 2008.

14 Q I know that.

15 A So I wasn't, he was the one who would be, who had
16 gone out and looked at it so I, I cannot say I was out in
17 the field looking at it but David Paine was the person. So
18 I'm familiar with the history but I didn't work on the case,
19 so just ask me whether I looked at it in 2008. Of course
20 not. I --

21 Q Well, that's --

22 A But I'm familiar with the case, I'm familiar with
23 its issues.

24 Q Well, when I started this off, I started to ask
25 you if you visited the intersections in the Glenmont area

1 and I tried to pin, pin down when you've seen them. Can you
2 tell, give us some indication of when you looked at the, you
3 personally have gone out and visited these intersections
4 that are generally in the Glenmont area?

5 A I did take a field trip once. Once the case came
6 back to me as a remand, I did take one field trip and did
7 survey, survey the intersections, yes.

8 Q So --

9 A But that was when I got the, when I started
10 working on the remand issue.

11 Q Okay.

12 A But previously, David Paine was, if you want to
13 reference --

14 Q Yeah.

15 A And he's in Texas somewhere.

16 Q I'm not looking to bring Mr. Paine in. What I'm
17 trying to ascertain is whether or not you personally have
18 firsthand knowledge but it sounds like you've seen this.
19 Would you agree with Mr. Hedberg that some of the worst
20 backups he's seen have been at Georgia Avenue and Layhill?

21 A Based upon the data in --

22 Q I'm asking about what you've seen, not the data.

23 A Well, like again, I was not working on this case
24 back then. I wasn't focused on this case so I didn't
25 personally see it.

1 MS. ROBESON: Okay. I think what he's asking is
2 when you did survey it, did you see it?

3 THE WITNESS: Oh, it wasn't as bad as it was in
4 2008.

5 BY MR. KAUFFUNGER:

6 Q Okay. Thank you.

7 A If that's -- yes.

8 Q Okay. You're aware then that, that the District
9 Council was persuaded that in these cases, CLV analysis
10 failed to adequately assess traffic conditions.

11 A I'm aware of that and that was part of remand,
12 yes.

13 Q I'm going to ask it a slightly different way then.
14 You would agree then that the testimony, the photographs and
15 other evidence established that under current conditions,
16 the intersection is heavily congested and is not operating
17 in a manner that any reasonable person could consider
18 acceptable.

19 A Are you referring to 2008 conditions?

20 Q Well, this is discussing, this is the resolution
21 of --

22 A I assume you --

23 Q -- the County Council. And the point that I am
24 trying to make here is that what we, we have a new factor
25 introduced now and that is what a reasonable person would

1 consider acceptable. We have official ways of analyzing it,
2 CLV, it hasn't worked, but they're introducing a new kind of
3 a concept and that is what a reasonable person would
4 consider acceptable.

5 A And what intersection is that again? Randolph and
6 Georgia?

7 Q They're talking about Randolph and Georgia but
8 they're really talking about the network.

9 MS. ROBESON: Well, that's your interpretation.

10 MR. ROBINS: And I would object.

11 MR. KAUFFUNGER: Okay.

12 MR. ROBINS: That's Mr. Kauffunger's opinion.

13 MR. KAUFFUNGER: Okay.

14 MS. ROBESON: Okay. You can ask him are you aware
15 that that was a finding by the County Council that, that
16 what?

17 MR. KAUFFUNGER: Well, if you go to the whole,
18 this whole paragraph and if we limit it just to Georgia
19 Avenue --

20 MS. ROBESON: Does he have a copy of it in front
21 of him?

22 MR. KAUFFUNGER: I don't know if he has it.

23 MS. ROBESON: Does anyone have a copy they can
24 lend to him because he's not going to know what paragraph.
25 I don't think he's going to be able to remember exactly

1 which paragraph.

2 MR. BRONSTEIN: Here you go.

3 THE WITNESS: Thank you.

4 MR. ROBINS: And what page are you talking about?

5 MS. ROBESON: And what page?

6 MR. KAUFFUNGER: And we're talking about page 17.

7 THE WITNESS: Is that the right document, 2008?

8 BY MR. KAUFFUNGER:

9 Q Yes. I believe. It's resolution, in the upper
10 right-hand corner, it's Resolution No. 16-424. And what I
11 can say is there's a, it's a whole large paragraph. Let me,
12 let me -- starting at the, this position of the District
13 Council starts at the very bottom of page 16, the previous
14 page, okay?

15 A Yes.

16 Q Okay. You know, the District Council persuaded
17 that in these cases, CLV analysis failed to adequately
18 assess the traffic conditions at Georgia and Randolph.
19 Further, they point out that the LATR study had concluded
20 that the intersection of Georgia and Randolph operates at an
21 acceptable level of, level currently. Why don't we just
22 stick with this so you don't get lost.

23 A No. But that's part of the answer.

24 Q Okay.

25 MS. ROBESON: I'm confused on -- is your question

1 that, of Mr. Axler that the Council found CLV inadequate in
2 this particular instance? Is that your question?

3 MR. KAUFFUNGER: No.

4 MS. ROBESON: Okay.

5 MR. KAUFFUNGER: No. What I'm trying to do is
6 establish foundation for looking at traffic from two
7 perspectives. One is LATR/critical lane volume, the other
8 is HCM because we have two different techniques that provide
9 different information and ultimately, the decision of the
10 County Council wasn't on APFO and LATR. It had to do with
11 compatibility and the Regional District Act about, on the
12 issue of public interest. So I'm trying to build --

13 MS. ROBESON: Okay. Why don't you just say don't
14 you agree with what you just said.

15 MR. KAUFFUNGER: I got cut off before I --

16 MS. ROBESON: Well, it's confusing when you go
17 back and ask him to read portions of, it's confusing to me.

18 MR. KAUFFUNGER: Okay.

19 MS. ROBESON: I'm not always the brightest bulb in
20 the planet so.

21 MR. KAUFFUNGER: Okay.

22 MR. BRONSTEIN: Do you have a copy?

23 MS. ROBESON: What?

24 MR. KAUFFUNGER: Do you have your copy of it?

25 MS. ROBESON: I do.

1 MR. KAUFFUNGER: Okay. Well, what I'm trying to
2 establish here, okay --

3 MS. ROBESON: No, but I understand now but why
4 don't you just ask him do you agree with that statement.

5 BY MR. KAUFFUNGER:

6 Q Do you agree with the statement that I just made?

7 A Based -- yes. Based on the 2007 traffic study,
8 the CLV exceeded the 1800 standard.

9 Q But --

10 A Thus, it would trigger further analysis.

11 MS. ROBESON: Let him finish.

12 THE WITNESS: That would be my response. Whether
13 the underlying issue -- whether where you're talking about
14 CLV and HCM, CLV is a general planning technique that looks
15 for issues and where there are further analyses needed, it
16 identifies them. So as a need for further analysis because
17 it's over 1800 in the background condition, it would
18 consider further analysis. The HCM is an operational tool
19 that's only for further analysis, not for planning
20 techniques as established by Planning Board and the County
21 Council.

22 MS. ROBESON: But I think what he's asking, and
23 correct me if I'm wrong, Mr. Kauffunger, I think what Mr.
24 Kauffunger is asking is do you agree that the Council found
25 that looking at CLV alone was insufficient to determine the

1 compatibility of the traffic with the project. Am I
2 correct, Mr. Kauffunger?

3 MR. KAUFFUNGER: That's one way of looking at it,
4 yes.

5 THE WITNESS: I disagree. CLV is a general tool,
6 planning tool to look, to identify problems and it did work
7 because it identified the intersection as being a problem
8 that required further analysis, so the CLV technique did
9 serve its purpose.

10 MS. ROBESON: Oh, I see. You're saying because
11 the CLV showed it exceeded the 1800 --

12 THE WITNESS: In the background condition and in
13 the total on improved conditions, it would show that -- so
14 the CLV analysis did its purposes by identifying, yes, it
15 needed further analysis for operational issues.

16 MS. ROBESON: Right. Is that -- do you think that
17 that's what the Council was saying because I think --

18 THE WITNESS: I cannot speak for the Council.

19 MS. ROBESON: Okay.

20 THE WITNESS: But if you ask me whether the --

21 MS. ROBESON: Go ahead, Mr. Kauffunger.

22 THE WITNESS: The CLV did its job.

23 MS. ROBESON: All right. I'm going to let you
24 follow up. I mean, I know the Council resolution says what
25 it says and I tend to agree with you on what the Council

1 resolution said, but you can follow up with additional
2 questions.

3 BY MR. KAUFFUNGER:

4 Q I wasn't going -- I was trying to, I was hoping to
5 build more foundation before I asked this question but are
6 you familiar with the fact that the Regional District Act,
7 specifically in the Maryland Code Annotated Section 7-110
8 states that, that -- I better rephrase it -- the stated
9 zoning enabling act applicable to Montgomery County requires
10 that all zoning must be exercised with the purposes of
11 guiding and accomplishing a coordinated, comprehensive,
12 adjusted and systematic development of the regional district
13 and for the protection, promotion of the health, safety,
14 morals, comfort and welfare of the inhabitants of the
15 regional district.

16 A Basically, I'm not an attorney or zoning analyst.
17 I'm not familiar with all these codes and how they're
18 worded. I understand as a traffic transportation engineer,
19 traffic engineer, how to apply them but if you ask me am I
20 familiar with the codes, a zoning analyst, I'm not an
21 attorney or a zoning analyst. I can't point out specific
22 sections but I'm familiar how it operates.

23 MS. ROBESON: So the answer is no. Your answer is
24 no, you're not familiar.

25 THE WITNESS: No.

1 BY MR. KAUFFUNGER:

2 Q No. You don't -- okay.

3 A But I know how to apply them as a matter of
4 practice.

5 Q However, you want to limit the application of only
6 CLV for the analysis of intersections.

7 A Are you asking me if that's my opinion?

8 Q Yes.

9 A It's based upon what the Planning Board and the
10 County Council require me in the requirements at this time.

11 Q Well, the State and the County require you to
12 uphold this, this standard of the public interest, and it's
13 separate from what you get out of a CLV.

14 MS. ROBESON: Well, you need to ask him a question
15 so --

16 MR. KAUFFUNGER: Okay.

17 MS. ROBESON: I understand where you're going.

18 MR. KAUFFUNGER: Okay.

19 BY MR. KAUFFUNGER:

20 Q Okay. At the bottom of page 17, the District
21 Council finds that the applicant has not met its burden of
22 demonstrating compatibility with regard to traffic impacts
23 to either stage 1 or stage 2. Are you in agreement with
24 that?

25 A I read what it says and understand it, and that's

1 their order. Again, you know, and again, I did work on the
2 2008 study but that was the finding.

3 Q But --

4 A So I can't say whether -- I agree with it because
5 that's what's written.

6 Q You --

7 A I wasn't, I didn't review it in 2008 so --

8 Q I asked you if you've read it and maybe I'll ask
9 you if you've reviewed this resolution of the District
10 Council.

11 A I read through it, yes. I read through it once.

12 Q Do you -- okay. Do you agree with it or do you
13 disagree with it?

14 A I agree -- like I said before, Georgia and
15 Randolph is a key intersection which exceeds CLV which
16 triggers further analysis. In that sense, I do agree with
17 it, yes.

18 Q Do you agree specifically on the Council finds
19 that the applicant has not met its burden of demonstrating
20 compatibility with regard to traffic impacts? Do you agree
21 with that statement? And this is an issue of compatibility.
22 It's different than CLV.

23 A I agree that if -- now, if I -- based upon my
24 knowledge at the time this first, the 2007 study came out,
25 they only did CLV analysis and it would require, I agree

1 with that, it required further analysis to determine if it
2 sought, you know, because it exceeded CLV, needs further
3 analysis, yes.

4 Q Okay. It does require further analysis.

5 A Based upon the facts in the 2007 traffic study.

6 Q Further clarification --

7 A What page are you on, please?

8 Q I have now turned to page 22.

9 A Thank you.

10 Q The very top of the page. And it does a linking
11 of the language of the Regional District Act to
12 compatibility. I want to see if you are in agreement that
13 based on the purpose clause language about, in open quotes,
14 coordinated, harmonious development, close quotes,
15 preventing detrimental impacts and promoting the health,
16 safety and welfare, compatibility is effectively an element
17 of the purposes clause.

18 A Again, I'm not a zone analyst or an attorney. I
19 understand how this is applied in transportation and traffic
20 reviews. I can't agree or disagree because I'm not -- it's
21 a zoning question. I would defer it to a zoning analyst to
22 answer that question.

23 Q Well, in preparing the staff report, did you meet
24 with the zoning analyst to come up with your recommendation?

25 A Oh, yes. We consult the, our, the packager and

1 others, and other master planners. We do meet with them and
2 we talk about these issues, and we agree that there are
3 transportation issues to be reviewed. Is that what you're
4 asking?

5 Q No. I asked you specifically something that was
6 written here in the resolution, and I'm trying to ascertain
7 whether or not there was a free give and take between you
8 and the other -- well, let me ask you. Who were the other,
9 specifically, who were the other planners that were involved
10 in the review?

11 A In working on the remand, I worked with Michael
12 Brown and Khalid Af --

13 MS. ROBESON: Afzal.

14 BY MR. KAUFFUNGER:

15 Q Afzal.

16 A Afzal. Sorry. And we discussed the issues, yes.

17 Q Okay. Did you discuss this particular issue that
18 was an issue for the District Council, and that is based on
19 the purposes clause language about coordinated, harmonious
20 development preventing detrimental impacts and promoting the
21 health, safety and welfare, compatibility is, in effect, an
22 element of the purposes clause?

23 A Not -- we did not discuss that specific clause.

24 Q Okay.

25 A As a transportation engineer, we look at adverse

1 traffic impacts but we don't, we don't focus, we never
2 focused on this particular clause.

3 Q Okay.

4 A But we are well aware of traffic, adverse traffic
5 impacts in zoning cases.

6 Q So it was not -- you're saying that within your
7 group, it was not recognized that this issue of coordinated
8 harmonious development, okay, and compatibility was a
9 significant issue in looking at traffic, the traffic
10 impacts.

11 A I cannot say what Michael Brown and Khalid talked
12 about but I --

13 Q When you were with them --

14 A But we did not go into the actual language, this
15 level of detail. We just talked about the adverse traffic
16 impact in terms of affecting the local road network.

17 Q So you did not --

18 MR. O'NEIL: Asked and answered.

19 MR. ROBINS: He answered.

20 MR. KAUFFUNGER: Okay.

21 MS. ROBESON: Yes. It is asked and answered.

22 MR. KAUFFUNGER: Okay.

23 THE WITNESS: Basically, it's too, too detailed of
24 a level. We don't get down to, you know, we just talk about
25 traffic impacts.

1 MS. ROBESON: So you're saying you don't go back
2 to the Regional District Act when you, when you undertake an
3 analysis.

4 THE WITNESS: I do not go into that level of
5 detail. I, I look at adverse traffic impacts on, on the
6 proposed development and I'm aware of the, that has to be
7 yes, but to go to that purpose clause --

8 MS. ROBESON: Yes. I understand what you're
9 saying.

10 THE WITNESS: Yes. I apply the principle. I've
11 been applying the principle for 27 years but to say that I
12 have looked at this one phrase, no, you know.

13 MS. ROBESON: Yes. Okay. Go ahead.

14 BY MR. KAUFFUNGER:

15 Q I'm going to ask a follow-up question along the
16 same lines. This is not the first round on this particular
17 case. Do you recognize that the District Council's primary
18 -- well, maybe I'll go to a different page. Hold for a
19 second. See if I can shelve it.

20 I have a section in the resolution on page 26,
21 okay? And so at the bottom of the page, H, okay, public
22 interest. The District Council concludes that except for
23 traffic impacts, the proposed zoning bears sufficient
24 relationship to the public interest to justify its approval.
25 In other words, everything was okay except this issue of

1 traffic impacts. And it goes on to explain that the State
2 Zoning Enabling Act applicable to Montgomery County requires
3 that all zoning power must be exercised. They are limiting
4 what you're to be looking at.

5 MR. O'NEIL: Objection.

6 BY MR. KAUFFUNGER:

7 Q Okay. Do you accept that they are limiting what's
8 to be looked at being issues of the public issues and
9 compatibility?

10 A I, I see what the words are and I see that it says
11 except for traffic, other issues are acceptable. I just, I
12 can read. I can read it. I'm not a zoning attorney or, a
13 zoning analyst or an attorney.

14 MS. ROBESON: I think what he's saying, Mr.
15 Kauffunger, is what you're asking him is actually a legal
16 conclusion on the interpretation of state law, and what I
17 hear Mr. Axler saying is hey, I'm just a transportation, no
18 offense, I couldn't be a transportation planner, but I think
19 what he's saying is I'm just a transportation planner and I
20 look at adverse impacts. But I think you're really trying
21 to get out of him, which he refuses to give you, is that
22 you're trying to get out of him a legal interpretation of
23 the Regional District Act.

24 MR. KAUFFUNGER: I'm not trying to get his legal
25 interpretation. I am only trying to ascertain whether or

1 not he agreed with what the position of the District Council
2 is or is he someplace else.

3 MS. ROBESON: Well --

4 MR. KAUFFUNGER: And it's sounding to me that
5 that's where he is, someplace else. He wants to look at
6 this the way he does with, you know, every zoning case, not
7 this one.

8 MS. ROBESON: Do you understand what the District
9 Council was writing?

10 THE WITNESS: Yes.

11 MS. ROBESON: Okay. Do you agree with it?

12 THE WITNESS: I -- based upon the 2007 traffic
13 study, I agree that Georgia Avenue and Randolph is a, has
14 congestion problems and there's traffic issues associated
15 with it.

16 MS. ROBESON: Well, I think Mr. Kauffunger is --

17 THE WITNESS: So --

18 MS. ROBESON: -- asking you a broader question.
19 What he's asking you is, is traffic limited to just CLV or
20 can there be operational or other issues that make traffic
21 incompatible with surrounding area?

22 THE WITNESS: Yes, there are. Especially since
23 the CLV is over 1800.

24 MS. ROBESON: Okay. So you're -- okay. Go ahead,
25 Mr. Kauffunger.

1 BY MR. KAUFFUNGER:

2 Q I'm hoping that this broadens it out a little bit.
3 On page 27 of the remand resolution, one paragraph up from
4 the bottom it states the one important public area in which
5 the District Council finds the evidence lacking is roadways,
6 okay? For the purpose discussed in part E above, the
7 District Council finds that the applicant has not met its
8 burden of demonstrating that the proposed development would
9 not have an adverse impact on the local roadway network.

10 Specifically, do you agree that we're talking
11 about the local roadway network, not just simply the Georgia
12 Avenue/Randolph Road intersection which you regularly refer
13 back to, we're talking about the network of roads in
14 Glenmont and that the applicant has not met its burden
15 because of the problems with CLV analysis? Let me just --
16 they haven't met their burden. Do you agree with that
17 statement of the District Council?

18 A I agree with the extent that the key critical
19 intersection in Glenmont is Georgia and Randolph and because
20 of that, it caused upstream and downstream queuing problems.
21 I agree with that, which are operational problems. Yes. I
22 agree to that extent. And then secondary problems because
23 of the congestion at the Georgia and Randolph, yes.

24 Q Okay. I'm going to see if we can bring more
25 clarity a different way. Did you review the May '08

1 analysis for this remand, as part of this remand?

2 MS. ROBESON: That would be Exhibit 147(f) in our
3 record, Mr. Axler.

4 MR. KAUFFUNGER: Yes.

5 MS. ROBESON: Just for the, so we're familiar with
6 -- and that would be the Wells study.

7 MR. KAUFFUNGER: The Wells study.

8 BY MR. KAUFFUNGER:

9 Q Are you familiar with these studies?

10 A Let me find it.

11 Q Did you read this, the supplemental traffic
12 analysis?

13 A Yes. I -- yes. I looked at the May 2008 study
14 and -- is it appendix?

15 Q Yes. The technical appendix.

16 A I'm aware of it. I didn't study every -- it's a
17 lot. I looked at the results from the appendix, not, I
18 didn't look at every page. Obviously, it's a lot to look
19 at.

20 Q What results did you look at?

21 A I looked at the queuing that was shown on --

22 Q On the pages in this document or in the
23 conclusions of the traffic expert for the applicant?

24 MS. ROBESON: I don't know -- I couldn't see.
25 What document are you talking about?

1 MR. KAUFFUNGER: The document is --

2 MS. ROBESON: The technical appendix?

3 MR. KAUFFUNGER: -- 147(f), the technical
4 appendix.

5 MS. ROBESON: Okay. And you're asking him whether
6 he looked at 147(f).

7 MR. KAUFFUNGER: Yes.

8 MS. ROBESON: I'm just clarifying some of this for
9 the record.

10 MR. KAUFFUNGER: Right.

11 MS. ROBESON: Because they won't know what this
12 document is.

13 MR. KAUFFUNGER: Right.

14 MS. ROBESON: Okay.

15 THE WITNESS: I did look at, I glanced at the
16 technical appendix but I was more, I was more concerned with
17 the results of the technical appendix and the, the result in
18 queuing to see what would be the impact on a local
19 intersection to see what is the projected impact as is
20 shown.

21 BY MR. KAUFFUNGER:

22 Q Would you agree that the supplemental traffic
23 analysis essentially provides a CLV analysis and that the
24 technical appendix is the Highway Capacity Manual method in
25 their results?

1 A Correct. That's what they did in their study.

2 Q Okay. Not in this study but that's how the two
3 different volumes work together.

4 A Correct.

5 Q Okay.

6 MS. ROBESON: Well -- okay. Never mind. Go
7 ahead.

8 THE WITNESS: That's the content of the studies,
9 yes.

10 MS. ROBESON: Mr. Axler, look at page 5 of the
11 Glenmont Metrocentre, the conclusions, 147(e).

12 MR. KAUFFUNGER: 147(e)?

13 MS. ROBESON: Yes. Page 5. Isn't that a queue
14 analysis rather than a CLV analysis, or am I wrong?

15 THE WITNESS: The queue analysis, that's a third
16 thing that was done. Yes. There were three elements.
17 Three things that were analyzed in that study.

18 MS. ROBESON: Okay.

19 THE WITNESS: That's a third element.

20 MR. KAUFFUNGER: By the way, the reason I'm
21 belaboring this is to start to bring clarity to what was
22 actually done as part of this study because --

23 MS. ROBESON: That's fine.

24 MR. KAUFFUNGER: -- it's, it's been mixed and
25 clouded and I did, obviously, an insufficient job when I

1 gave my testimony to explain all of this.

2 MS. ROBESON: No. Not really. I reread the
3 transcript and I totally understood it.

4 MR. KAUFFUNGER: Okay.

5 MS. ROBESON: Because what you did is point out,
6 you said in your testimony that even though the overall
7 intersection got a D or a C, there were approaches, single
8 approaches that were Fs and in some cases, according to your
9 testimony, the Fs got worse. That's what you were saying.

10 MR. KAUFFUNGER: Yes.

11 MS. ROBESON: And you're saying that that impact
12 would spread throughout the system. So I did understand
13 your testimony.

14 BY MR. KAUFFUNGER:

15 Q I'm going to go back a little bit to your
16 background. You have a bachelor's and a master's in civil
17 engineering with a specialty or a concentration in
18 transportation. What universities are those from?

19 A The University of Maryland and Penn State.
20 Maryland, undergraduate; Penn State, graduate.

21 Q Okay. I'm going to just step back a cent and say
22 in the state of Maryland, do you recognize that two standard
23 methodologies are used to assess traffic impact, as part of,
24 are employed as part of traffic impact studies, and they are
25 CLV and HCM, or Critical Lane Volume and Highway Capacity

1 Manual methods?

2 A I recognize that the state basically does a CLV
3 analysis and they employ HCM under special cases, yes.

4 Q Okay. Just again, a little bit more background.
5 What is CLV? How was it, how was it developed? I guess
6 even why was it developed?

7 A I can't tell you originally why it was developed,
8 but it was developed around 1908s by Steve Petersen and I
9 think maybe someone else. They published an article in ITE,
10 and its simplicity and its, and as a means, as a planning
11 tool to identify problem intersections was recognized and
12 used by many agencies and states and counties.

13 And CLV is the measure of the maximum throughput
14 that an intersection can have based upon that no two
15 vehicles, that a left turn and a through movement cannot go
16 at the same time. Otherwise, you'll have an accident.
17 Therefore, you're going to have left turn through movements,
18 so that's how you get the maximum throughput. I can give
19 more details if you --

20 Q So what, what does it actually measure? What does
21 the --

22 A The actual throughput of vehicles.

23 Q Right.

24 A That is possible with --

25 Q In all directions?

1 A In north-south and east-west.

2 Q So every approach is built into that.

3 A Yes.

4 Q Okay. Were you aware, by the way, that Ray Trout,
5 who I'm sure you worked with when he worked for the
6 Montgomery County Department of Transportation, was also,
7 worked on CLV for his master's degree?

8 A I'm aware that he worked on it. I wasn't aware
9 that it was part of his master's degree.

10 Q The thesis, yes. And he got his degree in --

11 MS. ROBESON: Okay. Mr. Kauffunger.

12 MR. KAUFFUNGER: Okay.

13 MS. ROBESON: Keep it to --

14 MR. KAUFFUNGER: Okay. Yeah, okay. I got it.

15 MS. ROBESON: You can have that discussion after
16 the hearing.

17 MR. KAUFFUNGER: Well, it's important that we
18 recognize, and what I was going to try to lead up to is when
19 CLV was actually developed, it was actually developed and
20 first published in the, I think it's 1971.

21 MS. ROBESON: Well, wait a minute. Wait a minute.

22 MR. KAUFFUNGER: So we have a 40-year history of
23 this.

24 MS. ROBESON: Well --

25 MR. KAUFFUNGER: But now I'm testifying so --

1 MS. ROBESON: Yes. Just -- I guess my question is
2 he's here on his staff report.

3 MR. KAUFFUNGER: I am going to tie it all together
4 for you.

5 MS. ROBESON: All right. Then --

6 MR. KAUFFUNGER: If I -- I'm trying to do it in an
7 orderly fashion so it can be followed, what's being done.

8 MS. ROBESON: Okay.

9 BY MR. KAUFFUNGER:

10 Q Since it was -- how has CLV been updated over
11 time?

12 A I can't recall. Without looking at the original
13 Steve Petersen article in ITE, I can't tell you what it
14 originally like. It's been updated by using lane-use
15 factors in some cases. Lane-use factors went for multiple
16 approaches to say that if you're more than one lane, to say
17 that not everyone will be in the left lane, more people like
18 to be in the right lane. So we have factored in, we
19 adjusted these factors over time. Some people use waiting
20 factors for a free flow, a left turn with a left turn arrow
21 versus a left turn where you have to wait for the through
22 movement on a ball. Some people use it, some people don't.
23 Some people use a free flow right turn versus one that is
24 not free flow. It's been updated in several ways.

25 Q All right. Okay. You're saying, are you saying

1 that the underlying method, not how people, what they put
2 into their CLVs, but the underlying method has changed?

3 A The underlying concept behind has not changed.

4 Q Okay.

5 A It's been updated to reflect the, the current
6 traffic characteristics as it changed over time.

7 Q What is the Highway Capacity Method?

8 A It's -- you'll have to -- it has changed. In '65,
9 it was, it was something and in '80, it changed. In 2000,
10 it changed and in 2010, it evolved. So which version do
11 you, are you interested in?

12 Q What method was used for this study that was done
13 by Wells & Associates?

14 MS. ROBESON: You're talking about the 2008 study?

15 MR. KAUFFUNGER: Yes.

16 MS. ROBESON: Yes.

17 BY MR. KAUFFUNGER:

18 Q What --

19 A I would, I would say it probably was the 2000
20 version because the 2010 wouldn't come out then.

21 Q Yes. Who developed the Highway Capacity Manual
22 Method?

23 A The National something something is a branch of
24 Transportation Research for National Cooperative Highways.
25 I'm not sure of the exact name.

1 Q Okay. Well, I'll ask you if, to be more precise,
2 is the Transportation Research Board a division of the
3 National Academy of Sciences?

4 A That's the larger body, and then there's a subunit
5 in between.

6 Q Yes.

7 A Which has like five initials, and I can't recall
8 the initials.

9 Q Who supports the development of, well, supports
10 the Transportation Research Board?

11 MR. O'NEIL: Objection. Relevance.

12 MR. KAUFFUNGER: Well, I would --

13 MS. ROBESON: What is the relevance?

14 MR. KAUFFUNGER: The relevance is that I make a
15 distinction between government entities developing
16 methodologies and independent corporations putting forth
17 their methodologies, and I think it would be useful in this
18 case because to sort out HC, well, because -- just bear with
19 me a moment or two.

20 MS. ROBESON: Okay. You have some leeway but --

21 MR. KAUFFUNGER: What I want to do is identify
22 that this is not, it's not an independent company that has
23 come up with a method, that it is a government supported,
24 it's an agency that is supported by federal agencies and
25 state department, and state transportation departments

1 and --

2 MS. ROBESON: Okay, but isn't CLV supported by
3 government agencies?

4 MR. KAUFFUNGER: It's not developed, it was not
5 directly developed that way and I will try, in my summation
6 --

7 MS. ROB Okay, but this, this to me --

8 MR. KAUFFUNGER: Where --

9 MS. ROBESON: One thing. This is not a trial on
10 CLV versus HCM. If you want to get to the specific defects,
11 that's fine but, I mean, we have -- let me try and
12 articulate this. I think he's already said that CLV doesn't
13 address all the issues.

14 MR. KAUFFUNGER: Right.

15 MS. ROBESON: So we're getting a little far afield
16 if we want to go back into -- I don't even know if that can
17 be the case that just because it's developed by private
18 entities or something is developed by non-private entities,
19 the Building Code, the International Building Code is
20 actually --

21 MR. KAUFFUNGER: Well, this actually goes back to
22 an earlier conversation that I had with Mr. Axler when Max
23 Bronstein, Vicki Vergagni and myself met with staff back in
24 January and he made some distinctions between HCM and then
25 Synchro. And I want to be able to establish as we go each

1 step of the way, okay, what we're, who, you know, who we're
2 dealing with and what they are.

3 MS. ROBESON: But I don't see that as particularly
4 relevant.

5 MR. KAUFFUNGER: Well, okay. If you find -- okay.
6 I will drop it right now and go on.

7 MS. ROBESON: Or, I mean, you can just ask him,
8 you can ask him whether he agrees, you know, with your
9 statement but I need to shortcut it a little because I think
10 on the scale of relevance, that's down there.

11 MR. KAUFFUNGER: Okay.

12 MS. ROBESON: I think what is relevant, if you
13 want to point out the difference in, you know, where there
14 may be shortcomings in the different methodologies, I think
15 that's relevant and whether, you know, what -- really what
16 we're here for, because I think the Council already said,
17 whether Mr. Axler agrees or not, I think the Council already
18 said that the CLV was insufficient which is why they
19 remanded it back.

20 MR. KAUFFUNGER: Right.

21 MS. ROBESON: So to me, the most relevant inquiry
22 would be Mr. Axler's, you know, methodology in analyzing
23 this report. Does that make sense? And then why he
24 abbreviated the 2011 report.

25 MR. KAUFFUNGER: Okay. I will be going into all

1 of those areas.

2 MS. ROBESON: Okay. But I don't have, I guess --
3 I have to cut it off when it gets too far afield.

4 MR. KAUFFUNGER: Okay. Fine.

5 MS. ROBESON: Okay.

6 MR. KAUFFUNGER: I will move on.

7 MS. ROBESON: All right.

8 BY MR. KAUFFUNGER:

9 Q But I would like to find out what does HCM
10 measure?

11 MS. ROBESON: And that's fine.

12 THE WITNESS: In 2002, HCM version you're asking?

13 BY MR. KAUFFUNGER:

14 Q 2000.

15 A I mean 2000.

16 Q Yes.

17 A It, it measures, it was changed to measure delay
18 and also has a queuing, queuing in volume to capacity but it
19 was --

20 Q Could you expand on each one of those because
21 they've become issues, okay?

22 A Okay. It, they, it was -- the national standard
23 was changed from a purely volume to capacity or a total
24 throughput to measure delay as seconds per vehicle.

25 Q Expand for Ms. Robeson a little bit about volume

1 to capacity.

2 A Volume capacity is you look at a roadway, an
3 intersection, a signalized intersection, an unsignalized
4 intersection, roadway, different types of roadway, suburban,
5 freeways, and you, by, based upon empirical data, you derive
6 what would be the maximum capacity given all sorts of things
7 like buses, grades, shoulders, roadway width, a lot of data-
8 intensive information. And then you actually do it, collect
9 the data and see how many vehicles are actually out there,
10 and you develop a ratio of what's out there versus what
11 would be the theoretical capacity. And then that's the
12 volume capacity ratio and based upon that, you assign, you
13 say it's at capacity in different levels of capacity.

14 MS. ROBESON: How did they come up with the
15 theoretical capacity?

16 THE WITNESS: Based upon empirical data over time,
17 they measure, they look at the, how, what the maximum number
18 of vehicles can go through a signalized intersection under
19 ideal condition and then you back it off based upon numerous
20 factors that would lower it.

21 MS. ROBESON: I understand what you're saying.

22 THE WITNESS: And there's lots of them. I even
23 made a list of them fast.

24 MS. ROBESON: So they're looking at detailed
25 operational characteristics of the intersection.

1 THE WITNESS: Correct.

2 MS. ROBESON: Like bus lanes or signal timing.

3 THE WITNESS: Grade, lane width, peak hour factor,
4 is it steady, a congestion or is it just, is it like a very
5 short peak.

6 MS. ROBESON: I see.

7 THE WITNESS: If you have major factory and
8 everyone leaves the factory at 5:00, you have that one peak
9 and that's it.

10 MS. ROBESON: Right.

11 THE WITNESS: Percent trucks, local bus stops that
12 will slow down, signal timing. Type of -- if you're in a
13 traffic signal system and it's, it's working really well,
14 you get groups of cars going through which could really help
15 because that means you make the whole network work well.

16 MS. ROBESON: I see.

17 BY MR. KAUFFUNGER:

18 Q What is Synchro?

19 A Synchro is a, is a computer program that simulates
20 traffic flow through a network of signalized intersections
21 and it, in doing so, it measures the, the actual number of
22 vehicles that the, it gives you a capacity of volume and
23 gives you queuing and all sorts of good, all sorts of
24 traffic data.

25 Q You specifically said simulates, okay? Are you

1 talking now about -- oh, God. Now I'm going to -- the
2 basic, the analysis that's been presented to us by Wells &
3 Associates is an HCM and capacity analysis as done by
4 Synchro 6. Synchro also sells a package that is called
5 SimTraffic. I think it's SimTraffic. Are you describing
6 both of those? I was asking you specifically what is
7 Synchro as used by Wels & Associates.

8 A It's a -- it still has to take all the traffic
9 inputs, all the detailed traffic down to the precise signal
10 time in at all the intersections, process it, applies all
11 the equations and formulas in the Highway Capacity Manual
12 and others and apply the, the external, external volumes and
13 everything else, and use that and actually generates a
14 number. It's generally -- it is a simulation in the sense
15 that it processes numbers.

16 Q Okay. To bring further clarification to the
17 differences between CLV and HCM, I'd like to just look at
18 the application of these different techniques as analyzed by
19 Wells & Associates. So, Mr. Axler, first what I would like
20 to do is to look at the CLV analysis that is in the
21 supplemental traffic analysis. Did you bring what you -- I
22 don't think you brought one of these along.

23 MS. ROBESON: When you say the supplemental, are
24 you talking about 147(e)?

25 MR. KAUFFUNGER: 147(e).

1 MS. ROBESON: Okay.

2 THE WITNESS: I didn't bring that one particular
3 along. I thought --

4 MR. KAUFFUNGER: Okay. Mr. O'Neil, could he use
5 your copy of it?

6 MR. O'NEIL: Absolutely.

7 THE WITNESS: I have the results, summary of the
8 results though.

9 BY MR. KAUFFUNGER:

10 Q We need to look at the details, okay? First, what
11 I'd like to do is just focus on the intersection of Layhill
12 and Georgia which is the intersection that is of great
13 concern to everybody in my community and myself because it
14 blocks our ability to get around. But if you look at page
15 C-4, you'll see on the bottoms -- I'm not looking at the
16 summary tables, okay? I want to look at the actual
17 analysis, okay? You see at the bottom there are numbers,
18 and I'm looking now for C-4.

19 Okay. Up at the top, it describes that this is
20 their intersection no. 4.

21 MR. KAUFFUNGER: And by the way, Ms. Randall, I
22 have to thank you because it's much easier to make it
23 through, once you figure it out, to make it through your
24 analysis sheets than Mr. Hedberg's analysis sheets.

25 BY MR. KAUFFUNGER:

1 Q At any rate, it's intersection 4. It's Georgia
2 Avenue/Layhill Road in this chart. On the left, we have the
3 a.m. peak hour. On the right, we have the p.m. peak hour.
4 Could you just tell us what the findings are?

5 A The total, the CLV totals, a.m. is 1,145, p.m.,
6 1,138.

7 Q Which states that essentially -- about, what does
8 it say about this intersection?

9 A Which means it's under the 1800 standard.

10 Q Okay. And it's operating at a pretty good -- it
11 works well.

12 A It's under the standard, yes, so it's considered
13 acceptable.

14 Q Okay. At this time, were there any problems at
15 this intersection? The CLV analysis appears to show that
16 there's no problems. Were there any problems that one could
17 experience?

18 A If you're asking based upon what I know about that
19 intersection, there were operational problems associated
20 with the side streets.

21 Q What would the side streets be?

22 A I -- because --

23 Q Is Layhill Road a side street?

24 A Oh, I'm sorry. Actually, you're right. Layhill
25 will be this side street, if anything, because Georgia,

1 although they're both major, Georgia Avenue is, would be the
2 more important north-south corridor in the County.

3 Q Is Georgia Avenue a state highway?

4 A Yes.

5 Q Is Layhill Road a state highway?

6 A Yes.

7 Q How many lanes are there on Georgia?

8 A Three in each direction through.

9 Q Okay. How many are on Layhill?

10 A I think it's three in each direction.

11 Q Okay. It actually has it on your chart in the
12 middle. Okay. But you -- CLV shows that it works without
13 any difficulties but you agree that it's recognized as
14 having difficulties.

15 A Because of the Georgia and Randolph excessive, is
16 a critical intersection and the spillback from that was
17 causing problems. There also was a left turn, I believe a
18 left turn on one of these, one of these that was a signal
19 timing problem. That was corrected by the state or no.
20 Probably the county.

21 Q Okay. What I'd like to do next, so we can see
22 what the differences are between CLV and HCM, could we turn
23 to -- I want to get my chart. Could we turn to page 5 in
24 the technical appendix? That's the other book.

25 MR. KAUFFUNGER: Ms. Robeson, are you looking at -

1 - okay.

2 BY MR. KAUFFUNGER:

3 Q Okay. This, again, is the intersection of Layhill
4 Road and Georgia Avenue, or Maryland 182 and Maryland 97.
5 We're talking about existing traffic in the a.m. peak hour.
6 And just so everybody is, and to help you, Ed, the eastbound
7 approaches there from Judson Street, which is a side street,
8 the westbound traffic is from Layhill Road just going across
9 here in these breakouts up there, okay? The northbound
10 approaches are Georgia Avenue and the southbound approaches
11 are Georgia Avenue. What is very interesting is that using
12 HCM, you identify what every --

13 MS. ROBESON: Okay, question.

14 MR. KAUFFUNGER: What?

15 MS. ROBESON: Question.

16 MR. KAUFFUNGER: Okay. Okay.

17 BY MR. KAY:

18 Q If you look at the westbound lane of Georgia
19 Avenue that's essentially coming down Layhill Road from Bel
20 Pre/Bonifant to the north, okay, what is the delay and the
21 level of service for that lane?

22 A Are you referring to the westbound left?

23 Q The westbound left.

24 A The delay?

25 Q Yes.

1 A It's the number of seconds would be 131.1.

2 Q 100 and --

3 MS. ROBESON: One --

4 THE WITNESS: 113.1.

5 BY MR. KAUFFUNGER:

6 Q And what is the level of service then?

7 A F.

8 Q Okay. And since you've raised the issue of the VC
9 ratio, okay, what is the VC ratio for that lane?

10 A 1.09. In other words, it's over capacity.

11 Q It's over capacity.

12 MS. ROBESON: So that lane, that approach --

13 MR. KAUFFUNGER: Yes.

14 MS. ROBESON: The left, no, the left-hand turn
15 lanes themselves are over capacity is what you're saying.

16 MR. KAUFFUNGER: Yes.

17 MS. ROBESON: Yes.

18 MR. KAUFFUNGER: Exactly.

19 BY MR. KAUFFUNGER:

20 Q Now, I was trying to bring out a little earlier,
21 okay, what does the, what does the motorist, particularly
22 the motorist going westbound and going to make a left onto
23 Georgia Avenue experience? A fine experience as the CLV
24 analysis says, or would they experience this F level of
25 service because it's of the wait?

1 A Yes, there's an operational issue associated with
2 this westbound left. The CLV experience is an average
3 overall experience of the intersection. They're not
4 compatible.

5 Q Okay. Are we then facing an issue that I put in
6 an e-mail I think to Ms. Robeson, that when you use CLV, you
7 average what's happening at the intersection as opposed to
8 looking at the specifics of each approach coming into the
9 intersection we use in HCM? Is that the grand difference if
10 you're looking at --

11 A That's one of the differences.

12 Q Okay. So this could be like on average, there's
13 no hunger in Montgomery County you would say but there could
14 be great hunger by particular families and individuals. Is
15 that a fair metaphor?

16 A Only if you say what the percentage that the, the
17 percentage of the people are hungry and that because most,
18 all these, all the other approaches are less than, are
19 operating at, well, a couple of them are at -- let me see
20 before I speak. Everything is below capacity except for
21 this one intersection so, yes, there's a small percentage of
22 people that are hungry.

23 Q You identify them as a small percentage of people
24 that are hungry.

25 A Or a percentage, a small --

1 Q Okay.

2 A Because they're -- it analyzes one, two, three,
3 four, five, six, seven, eight. Eight approaches were
4 analyzed. Only one approach exceeded capacity so one-
5 eighth.

6 Q However, if you go down to the line that's shaded,
7 that's volume and the volume per hour, it indicates there's
8 947 vehicles that are being impacted by this congestion.
9 I'm talking about right up there. Read across.

10 MS. ROBESON: When you say -- you have to be more
11 specific. What's the title of the line?

12 MR. KAUFFUNGER: Well, you know what I will do? I
13 presented, at the last hearing, a chart that could identify
14 the lines so that we could all get, so we could all stay
15 together.

16 THE WITNESS: The ninth line under the heading.

17 MR. KAUFFUNGER: Yes. I'm going to, this is --

18 THE WITNESS: Which is labeled volume, volume
19 parenthesis.

20 MS. ROBESON: That's fine.

21 THE WITNESS: V, V, VH -- no. VPH, volume per
22 hour.

23 MR. KAUFFUNGER: Since this has been introduced
24 into the record --

25 MS. ROBESON: That's fine.

1 MR. KAUFFUNGER: -- Exhibit 193(a) just on an
2 ongoing basis when we do this, we can simplify it by just
3 going to these, you know, lines.

4 BY MR. KAUFFUNGER:

5 Q It's actually line 10 as I have numbered them,
6 okay?

7 A Okay.

8 Q So that's just as an aid.

9 MR. KAUFFUNGER: Do you want, do you have that in
10 front of you?

11 MS. ROBESON: I have it.

12 MR. KAUFFUNGER: Okay. If you want to use it,
13 okay.

14 BY MR. KAUFFUNGER:

15 Q By the way, I would just, just so there's no
16 confusion as to the data that goes into this, we have page 5
17 in front of us. Can we go back to -- could you keep that
18 open and then open it to C-4, which is the same
19 intersection?

20 MS. ROBESON: C-4 in 147(e).

21 MR. KAUFFUNGER: In 140 -- yes. Okay.

22 BY MR. KAUFFUNGER:

23 Q And I just want to verify or have Mr. Axler verify
24 that the traffic volumes, the traffic counts are exactly the
25 same for the CLV analysis as for the HCM analysis.

1 A I don't see the number here.

2 Q Okay.

3 MS. ROBESON: He doesn't have to answer that. I
4 can see that they are.

5 BY MR. KAUFFUNGER:

6 Q Okay. I ended up taking a different exhibit.
7 You're not comparing.

8 A Oh.

9 Q Oh, okay. You swapped pages.

10 A Okay. That's why. I was looking. Because I was
11 saying where are the numbers. 31, 5. Yes. Yes. All the
12 number of cars spot --

13 MS. ROBESON: Layhill and Georgia, C --

14 THE WITNESS: All the numbers were correctly
15 written down on both pages.

16 BY MR. KAUFFUNGER:

17 Q Well, correctly analyzed.

18 A Well, the numbers written on, on page --

19 Q Okay.

20 MS. ROBESON: Your question was are the numbers
21 the same, and he's saying yes.

22 MR. KAUFFUNGER: Yes. Okay.

23 MS. ROBESON: Okay. We've established that.

24 MR. KAUFFUNGER: Okay.

25 BY MR. KAUFFUNGER:

1 Q Keeping C-4 open, now I would like in the
2 appendix, I would like to go to page 14.

3 MS. ROBESON: The appendix says 147(f).

4 MR. KAUFFUNGER: And that's in 1, yeah, 147(f).
5 You'll teach me this.

6 BY MR. KAUFFUNGER:

7 Q Again, we have a situation. Okay, are you there?

8 A Yes.

9 Q Okay. If you look down to the delay line which
10 using this chart, okay, is line 30, okay, there's an actual,
11 there is one movement which is, has a delay of 258.7
12 seconds, correct?

13 A Correct.

14 Q How long of a wait is that, roughly, in minutes?

15 A Divide it by 60.

16 Q Yeah, okay. So it's about four minutes. Okay.
17 Now, it's traffic coming from where?

18 A The top header says eastbound through.

19 Q Okay. It's a light movement but what is the
20 volume of vehicles that would be coming out?

21 A You're referring to 131?

22 Q Yes. So again, both in the a.m. and p.m. peak
23 hours, we have differences. I shouldn't say -- we have
24 certain movements that are operating at a level of service
25 F.

1 MS. ROBESON: Question.

2 MR. KAUFFUNGER: Yes. Okay.

3 MS. ROBESON: No. No. You're --

4 MR. KAUFFUNGER: I know I've got to -- I've got to
5 sum it up and I'm --

6 MS. ROBESON: No, you're not. You don't get to
7 sum it up. You have to get him to agree.

8 MR. KAUFFUNGER: No. I'm going to, I'm going to --
9 -- I'm leading up to my question. Let me just keep going for
10 a second.

11 MS. ROBESON: All right. You know --

12 MR. KAUFFUNGER: The bottom line --

13 MS. ROBESON: -- I'm not being hard. I just have
14 to keep it fair to both sides because this is cross-
15 examination and this isn't your time to get a second chance
16 to make your points.

17 MR. KAUFFUNGER: No, no. Okay.

18 MS. ROBESON: Okay?

19 BY MR. KAUFFUNGER:

20 Q Are there observed problems at this intersection,
21 both in the a.m. and the p.m.?

22 A Yes. There's operational problems associated with
23 the intersection. Associated with those two movements.

24 Q Does this, does the HCM analysis respond to the
25 concerns of the District Council?

1 A In that it's an adverse impact, no, because, I
2 have to say no because adverse impact is the impact that the
3 site generates traffic by a proposed development on the
4 network. This is an existing condition. An adverse impact,
5 if the site generates traffic, it would make this worse.

6 Q Does this illustrate the congestion that Mr.
7 Hedberg, Ms. Vergagni, other community members and
8 photographs that were taken, does this illustrate all of
9 that evidence that was submitted into the record?

10 A This --

11 MR. ROBINS: Objection. I don't know how he lumps
12 Mr. Hedberg into that.

13 MR. KAUFFUNGER: Mr. Hedberg because that's a
14 statement that I brought up earlier.

15 MS. ROBESON: Well, do you know all the, because
16 it was if you know, if it was prior, I mean, I don't know if
17 you know to what he's referring.

18 THE WITNESS: If it's actual existing evidence
19 that there's two of the movements, one in the a.m. and one
20 in the p.m. is failing which is, which is an existing
21 traffic problem. Now, to know all the concerns, all the
22 testimony, I wasn't there so I can't say but, yes, it
23 illustrates two operational problems, one in the a.m. and
24 one in the p.m.

25 MS. ROBESON: Okay.

1 MR. KAUFFUNGER: Okay. I would like to respond
2 also that when I raised this issue, I'm basing it around
3 statements --

4 MS. ROBESON: Wait. Wait. Wait. You don't get
5 to respond to his answers.

6 MR. KAUFFUNGER: I'm responding to Mr. Robins.

7 MS. ROBESON: Well, he answered --

8 MR. KAUFFUNGER: He made a statement. He put in a
9 statement that Mr., I lumped all these people together.

10 MS. ROBESON: This is your time -- your testimony
11 is in so you save that statement for closing argument. This
12 is really not the time for you to make -- he was objecting
13 and I overruled, essentially overruled his --

14 MR. KAUFFUNGER: I guess I didn't -- well, okay.
15 I didn't hear the clear --

16 MS. ROBESON: Well, I didn't say overrule. I let
17 him answer.

18 MR. KAUFFUNGER: Okay. Okay. I would like to go
19 on to other intersections.

20 MS. ROBESON: Well, how many are we going to do?

21 MR. KAUFFUNGER: We're going to do three all
22 together.

23 MS. ROBESON: Okay.

24 MR. KAUFFUNGER: It's just to demonstrate without
25 a shadow of a doubt that we have issues.

1 MS. ROBESON: Well, I think the Council --

2 MR. KAUFFUNGER: Now --

3 MS. ROBESON: Just a second. Let me finish. I
4 think the Council realized you had issues. I don't think
5 that's what is at issue in the case. What's at issue in
6 this case is whether the grade separation interchange and
7 whether with the grade-separated interchange, and after
8 this, we're going to take a five minute break, but what's at
9 issue in this case is whether the grade-separated
10 interchange significantly ameliorates the existing problems.
11 That's -- I recognize and the Council recognized that there
12 are operational problems not covered by CLV.

13 MR. KAUFFUNGER: Then I would like to directly
14 respond to that.

15 BY MR. KAUFFUNGER:

16 Q Mr. Axler, would you go to page 171?

17 MS. ROBESON: Of which document?

18 MR. KAUFFUNGER: Of 147(f).

19 BY MR. KAUFFUNGER:

20 Q 147(f) is the capacity analysis of intersection
21 no. 4 which is Layhill Road and Georgia Avenue, again
22 Maryland 182 and 97. This is the total future stage 1 and 2
23 a.m. peak hour with the GS at the top stands for the grade,
24 with the grade separation. And when you're looking at the
25 problem, the lanes and approaches, you're again looking at

1 Layhill Road, which is westbound and particularly, the
2 westbound left. Mr. Axler, what is the delay for the
3 westbound left?

4 A 140 seconds.

5 Q And that is what level of service?

6 A It's exceeding capacity. It's level service S,
7 but exceeding the capacity.

8 Q Okay. What is the VC ratio?

9 A 1.16.

10 Q So with the development in place and with the
11 grade separation in place, we have an unacceptable level of
12 service, correct?

13 A Yes, given the signal timing and the data that was
14 entered into the Synchro analysis. However, since then, the
15 County, I believe, they came to realize there was problems
16 signal timing and, and corrected it and if it was run, and
17 if it was run again, this problem probably disappeared.

18 Q In materials submitted into the record, Ms.
19 Randall had indicated that she was going to be making lane
20 changes and signal timing changes at that intersection, so I
21 have to, and I --

22 MS. ROBESON: Wait. I don't think she testified -
23 -

24 MR. KAUFFUNGER: It's in the, it's in her studies.
25 She shows she made --

1 MS. ROBESON: I saw the lane changes.

2 MR. KAUFFUNGER: Right.

3 MS. ROBESON: But I thought she testified she
4 wasn't going to make signal timing changes.

5 MR. ROBINS: Can you be more specific about the --
6 you're talking about Layhill and Georgia?

7 MR. KAUFFUNGER: Layhill and Georgia.

8 MS. ROBESON: Oh, yeah. It was Glenallen and --

9 MR. ROBINS: What lane changes are you referring
10 to?

11 MR. KAUFFUNGER: We're talking about two places
12 she specified changes. One was at Layhill and Georgia, the
13 other one was Glenallen and Layhill, okay, and she makes
14 specific comments.

15 MR. ROBINS: That's incorrect. That statement is
16 incorrect.

17 MS. ROBESON: Okay. Well, are you objecting then?

18 MR. ROBINS: I would object to that.

19 MS. ROBESON: For accuracy?

20 MR. ROBINS: It's not accurate.

21 MS. ROBESON: Well, you can ask a hypothetical.
22 Why don't you just ask this question and then after this
23 question, we're going to take a five minute break. Mr.
24 Axler, you can't talk to Mr. O'Neil. Okay. Go ahead.

25 BY MR. KAUFFUNGER:

1 Q Since this is a projection into the future, why
2 can't we assume that in, that the analyst didn't put those
3 beneficial changes into this analysis?

4 A I didn't do the analysis so I cannot make any
5 assumptions. Only thing I can tell you is based upon
6 whoever did it must have done it based upon the signal
7 timing data they had in 2008 and since then, it's been
8 changed.

9 Q Okay. Let me just verify something else, okay?
10 MS. ROBESON: We're going to take a five minute
11 break.

12 (Whereupon, at 11:08 a.m., a brief recess was
13 taken.)

14 MS. ROBESON: We're back on the record. I did do
15 an electronic search through the transcript during the break
16 and the only place I can find Ms. Randall testifying to
17 signal changes at Layhill and Georgia was page 20, 72.

18 MR. ROBINS: Of the transcript?

19 MS. ROBESON: Yes, but it says that the signal
20 timing changes have already been made, that things were
21 operating a lot better in 2011 because of signal timing that
22 it had --

23 MR. KAUFFUNGER: Page 70 --

24 MS. ROBESON: 72 of the transcript, not the
25 traffic --

1 MR. KAUFFUNGER: Oh, the transcript.

2 MS. ROBESON: I saw the red cover and I was like
3 I'm not sure you're in the right document.

4 MR. KAUFFUNGER: No, no.

5 MS. ROBESON: So that was the only, you know, when
6 I first saw it, I said, I thought that she was saying that
7 she was going, saying in the future with minor modifications
8 but then when I reread it just now, she is saying that the
9 minor modifications out there had already been made which
10 meant that the, that, quote, things were operating a lot
11 better. Now, that's all I saw in the --

12 MR. KAUFFUNGER: I will have to -- I found where.
13 I got it.

14 MS. ROBESON: Oh, okay. Where did you get it
15 from?

16 MR. KAUFFUNGER: And it's on page 5 of the
17 supplemental traffic analysis, and it turns out --

18 MS. ROBESON: 147(e)?

19 MR. KAUFFUNGER: In 147(e), page 5, the last
20 paragraph. Both of these improvement scenarios also include
21 a proposed modification to the existing lane use on the
22 eastbound approach through the --

23 MS. ROBESON: Okay. So just --

24 MR. KAUFFUNGER: Okay. That's, that's where I was
25 getting it from that she had already proposed some changes.

1 MS. ROBESON: I think the changes were at
2 Glenallen and Layhill.

3 MR. KAUFFUNGER: No, but this is, this is where
4 they talk about --

5 MS. ROBESON: Where are you?

6 MR. KAUFFUNGER: Oh, let me step back again. Oh,
7 God. I read it wrong just then even.

8 MR. ROBINS: Where were you reading?

9 MR. KAUFFUNGER: I misread it, okay?

10 MS. ROBESON: Yes. I see where you're reading.

11 MR. KAUFFUNGER: It's Layhill -- it's still, yeah.
12 That's not -- I didn't clarify anything, do anything with
13 that statement. Okay.

14 MS. ROBESON: All right.

15 MR. KAUFFUNGER: Okay. What I would like to do
16 next --

17 MS. ROBESON: Okay.

18 MR. KAUFFUNGER: -- is to analyze or to look at a
19 couple of other intersections, okay?

20 MS. ROBESON: In the future conditions?

21 MR. KAUFFUNGER: I want to look at what CLV said,
22 okay, then what the HCM said for existing and the future.

23 MS. ROBESON: Okay.

24 MR. KAUFFUNGER: I want to compare existing to
25 existing under CLV and then look at the future.

1 MS. ROBESON: Okay.

2 MR. KAUFFUNGER: Okay? So what I would like to
3 look at next is Glenallen/Georgia Avenue.

4 MS. ROBESON: Can you --

5 MR. KAUFFUNGER: And this is -- the CLV is on C-2.

6 MS. ROBESON: Of 147(e).

7 MR. KAUFFUNGER: Yes.

8 MS. ROBESON: Do you have that, Mr. Axler, C-2?

9 THE WITNESS: Yes, I do.

10 MS. ROBESON: Okay.

11 THE WITNESS: Thank you.

12 BY MR. KAUFFUNGER:

13 Q This is also, can be referred to as intersection
14 2. You with me there?

15 A Yes.

16 Q Okay.

17 A I'm on that page.

18 Q And all right. This CLV analysis appears -- is it
19 correct to say that this intersection, based on the CLV
20 analysis, is working very well at the time of this study?

21 A It's correct to say that this intersection has a
22 CLV number that is less than the standard.

23 Q Well, looking at the a.m., is the level of service
24 A just less than the standard or can you say anything more
25 of that?

1 A Yes, the standard is 1800, and 812 is much less
2 than the 1800 standard. Officially, the LATR guideline, the
3 LATR/PAMR guidelines do not use level of service. That's
4 why I'm not referring to levels of service.

5 Q I have not asked you about PAMR so please refrain
6 from bringing that in.

7 MS. ROBESON: Well, you can't --

8 BY MR. KAUFFUNGER:

9 Q And it wasn't studied.

10 MS. ROBESON: You can't control his, his answer.

11 MR. KAUFFUNGER: Okay. You're right.

12 THE WITNESS: Now, this is LATR guideline for,
13 LATR review of traffic study does not, we have not used
14 level of service in our LATR guideline for a long time.

15 MS. ROBESON: Okay. And I agree with you, Mr.
16 Kauffunger, that PAMR is not part of the remand in this
17 case.

18 MR. KAUFFUNGER: Yes.

19 BY MR. KAUFFUNGER:

20 Q I didn't explain earlier why I didn't bring up the
21 issue of CLV with the grade separation.

22 MS. ROBESON: Well, don't explain it. Just ask a
23 question.

24 MR. KAUFFUNGER: Okay. Okay. Yes.

25 BY MR. KAUFFUNGER:

1 Q Let me see if you can find in document 147(e) --

2 A Which is?

3 Q This one.

4 A Yes.

5 Q Could you find the CLV for Georgia Avenue and
6 Glenallen with a build-out with the grade separation?

7 MS. ROBESON: Well, is it on C-2?

8 MR. KAUFFUNGER: The reason I ask it that way --

9 MS. ROBESON: Yes.

10 MR. KAUFFUNGER: -- is I could never find it.

11 MS. ROBESON: Oh.

12 MR. KAUFFUNGER: It doesn't exist, at least in the
13 documents --

14 MS. ROBESON: Okay. Don't -- well, let's not --
15 if you know it doesn't, you can, if you, I don't want him to
16 spend time --

17 MR. KAUFFUNGER: He's got one from the attorney.

18 MS. ROBESON: What do you mean?

19 MR. KAUFFUNGER: He's got a different --

20 MR. ROBINS: Yes. What do you mean?

21 MR. KAUFFUNGER: What do I -- maybe they have the
22 pages in his.

23 MS. ROBESON: Well, oh. Well, why don't -- okay.
24 This is not a kind of sandbag. You can ask him if he's
25 aware of a CLV with the future conditions.

1 MR. KAUFFUNGER: Yes. Okay.

2 BY MR. KAUFFUNGER:

3 Q Were you aware or did you look at the actual CLV
4 analysis sheet for Georgia/Glenallen for the future with the
5 full build-out of, what do they call them, stages 1 and 2
6 with the grade separation in place?

7 MS. ROBESON: If you know.

8 THE WITNESS: I just based on page 7, table 1, I
9 don't see a CLV value on it but I can't speak for the whole
10 document because I didn't prepare it. Page 7, but I can't
11 speak for --

12 MS. ROBESON: Okay.

13 THE WITNESS: Okay. And it could have not been
14 done and, but I can't speak for how it was prepared at the
15 time.

16 BY MR. KAUFFUNGER:

17 Q Okay. We just looked at Glenallen and Georgia and
18 CLV analysis in both the a.m. and p.m. peak hours. Now I
19 would like to turn to the HCM analysis and that's, the a.m.
20 is on page 3 of the technical appendix.

21 MS. ROBESON: 147(f).

22 MR. KAUFFUNGER: Yes.

23 MS. ROBESON: Okay. Your question?

24 BY MR. KAUFFUNGER:

25 Q In the -- I'm going to -- you see, again, an

1 unexplained level of service F. Can we go to page 12 which
2 is the same intersection, now at the p.m.? And I'm catching
3 myself going too far ahead on this, what I would like to do.
4 Again, this is existing conditions and now I'd like to go to
5 future conditions for that intersection, and that is on 169.
6 Now, on 169, maybe the -- I tend to skip over too rapidly.
7 On 169, we're looking at total future stage 1 and 2 a.m.
8 peak hour conditions and at this point, westbound left, what
9 is the operating level of service in the delay for that
10 lane?

11 A Future conditions you mean?

12 Q Yes. And it's on 169.

13 A Around 90 seconds.

14 Q Okay.

15 A Rounded up.

16 Q And a level of service?

17 A F.

18 Q There is also a level of service F for the
19 northbound lane.

20 A Northbound left.

21 Q Yes, northbound left.

22 A There's a 90.5 seconds.

23 Q Okay. There's very, there's very few cars making
24 that movement. However --

25 MR. ROBINS: Question.

1 BY MR. KAUFFUNGER:

2 Q -- it does not appear that the garage --

3 MR. ROBINS: Question.

4 MS. ROBESON: Okay.

5 MR. KAUFFUNGER: Okay.

6 MS. ROBESON: You can't just say there's very few
7 cars.

8 MR. KAUFFUNGER: Okay.

9 MS. ROBESON: You've got to phrase it in the form
10 of a question.

11 MR. KAUFFUNGER: If I went through more legal
12 training other than --

13 MS. ROBESON: Well, I'm ready to --

14 MR. KAUFFUNGER: I'd get better.

15 BY MR. KAUFFUNGER:

16 Q But at any rate, that northbound left will now be
17 the Metro garage that opens today. How was that built into
18 these numbers?

19 A It's my understanding that the traffic from the
20 garage was included in background traffic if that's what you
21 mean. This is a total traffic condition. It includes the
22 existing approved but undeveloped, unbuilt and site-
23 generated traffic so it was included as part of the
24 background traffic.

25 Q Do you verify whether or not those projections are

1 correct?

2 A Projections of what?

3 Q Of background traffic.

4 A And?

5 Q Are you familiar with the traffic study done for
6 the Glenmont parking garage, parking structure?

7 A Yes.

8 Q Okay. It was introduced into the record as
9 Exhibit 195. Did you bring that with you by any chance?

10 A I have a copy of it, yes.

11 Q On page 22, okay. On page 22, they show a trip
12 generation for the project. How many -- what they've built
13 is a western alternative. How many parking spaces were
14 there?

15 A On the page, it reads as 1,112.

16 Q Okay. How many, in the a.m. peak hour, how many
17 vehicles would be entering that west garage that's going to
18 open today?

19 A 567.

20 Q Okay. On the analysis for the future, maybe I,
21 yeah, for the future, this would be assuming that that's
22 built, on Georgia Avenue, southbound right, how many rights
23 are there into the parking garage?

24 A Are you back to the technical appendix?

25 Q No. I'm -- yes. The technical appendix, 147(f),

1 page 169 that covers the intersection that's directly
2 impacted.

3 MR. KAUFFUNGER: Well, maybe I'll just make sure
4 Ms. Robeson understands.

5 MS. ROBESON: I under --

6 MR. KAUFFUNGER: This is Glenallen, okay?

7 MS. ROBESON: I do know that.

8 MR. KAUFFUNGER: Yes. And all of it, okay?

9 THE WITNESS: So what --

10 BY MR. KAUFFUNGER:

11 Q On the volume, on the various movements of traffic
12 into that new garage, which would be a westbound through off
13 of Glenallen, a northbound left off of Georgia and a
14 southbound right off of Georgia --

15 A Yes.

16 Q In this case, okay, those are the three movements
17 of traffic into -- how many vehicles will be going into the
18 garage in the a.m. peak hours?

19 A You're saying the sum of three?

20 Q Yes.

21 A That's the total future. Let me think. Are we --
22 I'm not --

23 Q Would you agree that the only, the only building
24 or anything that exists on the west side of Georgia Avenue
25 at Glenallen would be the new Metro parking garage?

1 A No.

2 Q What else would there be?

3 A There's a fire station proposed but that hasn't
4 been built and I can't say it's going to built. It has to
5 be funded and a lot of hoops to go through yet.

6 Q Okay. So that would only add to the numbers.

7 A Nominal because fire stations don't generate that
8 many people going there.

9 Q At any rate, on the trip generation on page 22 of
10 the street traffic study for the Glenmont parking garage,
11 you stated there would be 567 vehicles entering the parking
12 garage.

13 A Yes.

14 Q Add up those columns.

15 MS. ROBESON: Well, I -- we need to -- I don't
16 want to make him sit through -- can you just roughly
17 estimate in round numbers because I need to get to the point
18 because I'm not going to take this to another day.

19 MR. KAUFFUNGER: Okay.

20 MS. ROBESON: So if you've added them up, you can
21 say isn't it true "x" or --

22 BY MR. KAUFFUNGER:

23 Q Mr. Axler, look at my addition here. It's 293, 18
24 and 14.

25 A Where's 293?

1 Q 293 is here. Southbound rights on Georgia into
2 the garage.

3 A Oh, you didn't yellow it. Okay. I see. I was
4 looking at one of the yellow ones.

5 Q Okay. Northbound left. Going northbound on
6 Georgia, you make a left going into the --

7 A Yes.

8 Q Okay. And Glenallen would be westbound through
9 14.

10 A That's the volumes that were entered.

11 Q Okay.

12 A Yes.

13 Q The total on, in Exhibit 147(f) of vehicles
14 entering the garage is 325, yet the Metro, how does that
15 reconcile with the Metro generation rate of 567?

16 MS. ROBESON: Wait. I'm confused by your
17 question. How -- okay. Mr. Axler, give me an estimate of
18 all -- well, wait a minute. Okay. You're right. Give me
19 an estimated sum of the three movements that would enter the
20 garage. Just, just round them.

21 THE WITNESS: Okay.

22 MS. ROBESON: It's westbound through, right?

23 THE WITNESS: Westbound through.

24 MS. ROBESON: Which is what?

25 THE WITNESS: From what document are we taking it?

1 MS. ROBESON: I'm on 147(f), page 169.

2 THE WITNESS: Are we doing --

3 MS. ROBESON: It would be 367, right, under
4 volume?

5 MR. KAUFFUNGER: No. Westbound through is 14.

6 MS. ROBESON: No, no, no. It wouldn't. Okay.
7 It's 14. All right. Then it would be southbound right,
8 correct?

9 THE WITNESS: Correct.

10 MS. ROBESON: Okay. So what's that volume?

11 THE WITNESS: 293.

12 MS. ROBESON: Okay. And then it would be
13 northbound left, correct?

14 THE WITNESS: 18.

15 MS. ROBESON: 18, okay. So when I add it up, I
16 get 325. Is that what you got?

17 THE WITNESS: Yes.

18 MS. ROBESON: Okay. So now what do you want him
19 to compare it to?

20 MR. KAUFFUNGER: Compare it to the traffic study.

21 MS. ROBESON: Which is exhibit --

22 MR. KAUFFUNGER: Which is Exhibit 195.

23 MS. ROBESON: And this is the one for the parking
24 garage.

25 MR. KAUFFUNGER: Which is, yes.

1 MS. ROBESON: All right.

2 MR. KAUFFUNGER: And they refer to it as the west
3 alternative.

4 THE WITNESS: 5, 567.

5 MS. ROBESON: Okay.

6 THE WITNESS: And what's the question?

7 BY MR. KAUFFUNGER:

8 Q Has the study that's Exhibit 147(f) severely
9 underestimated the amount of traffic that will be going in
10 and out of the garage?

11 A It did not accurately reflect it because based
12 upon testimony that I learned from this hearing last,
13 previous testimony, I learned that the original traffic
14 study was prepared based upon the trip, the site, the site
15 projected from the parking garage but failed to include the,
16 the redistributed trips, that page. In doing so, it --

17 MS. ROBESON: And they would be trips
18 redistributed from the existing garage?

19 THE WITNESS: Correct. It's --

20 MS. ROBESON: Okay.

21 THE WITNESS: So instead of going down Georgia and
22 making a left into the current garage, they're making a
23 right into this garage.

24 MS. ROBESON: Okay.

25 THE WITNESS: So it failed to do it because -- I

1 might repeat the testimony.

2 MS. ROBESON: No.

3 THE WITNESS: Yeah.

4 MS. ROBESON: I understand. You're --

5 THE WITNESS: And so I acknowledge that, yes,
6 based upon a previous study that was the reason why.

7 MS. ROBESON: Okay.

8 THE WITNESS: And I believe also during that
9 testimony, updated information was submitted to update that,
10 the CLV.

11 MS. ROBESON: Yes. Yes.

12 THE WITNESS: All right.

13 MS. ROBESON: There was -- I do remember that.

14 MR. ROBINS: Exhibit 196.

15 MS. ROBESON: Right.

16 THE WITNESS: So that explains the discrepancy.

17 MS. ROBESON: Okay.

18 THE WITNESS: And I, and based upon what I learned
19 is that it was an accidental mistake. The person who was
20 given this, Craig Hedberg was given the Glenmont study was
21 only given that one page. He should have been given two
22 pages.

23 MS. ROBESON: Okay.

24 MR. KAUFFUNGER: Just to refocus, we're not
25 looking at Mr. Hedberg's study.

1 MS. ROBESON: Right.

2 MR. KAUFFUNGER: We are looking at the study that
3 was done May 2008.

4 MS. ROBESON: Right.

5 MR. KAUFFUNGER: Okay.

6 MS. ROBESON: But he's just acknowledging that
7 there's a mistake in the numbers attributed in the 2008
8 study.

9 BY MR. KAUFFUNGER:

10 Q And then you agree that the traffic impacts of the
11 garage were severely underestimated.

12 A No, because in redistributing the traffic from the
13 east to the west, you're, some movements, you're moving some
14 movements that are in a critical movements away from it and
15 then you add, others you're adding to the critical movement
16 so the net effect is only can be determined by doing the CLV
17 again. So it's not a net increase. It's, you're reducing
18 it in some critical movement in some direction and adding it
19 in others. The exact numbers I'm not going to guess. It's
20 based -- if I read right, it was introduced.

21 Q In this specific situation that I am describing
22 right now, we are not doing the CLV analysis. I am only
23 asking you about the traffic count that should be put into
24 the study, whether it's CLV or HCM. That the, the traffic
25 counts or volume in the peak hour has been severely

1 underestimated.

2 A No. That's the total traffic that is projected
3 from the garage. It includes the new trips plus the
4 redistributed trips in the east. So you can't -- you have
5 to separate that number from the redistributed and the new
6 trips, so I can't tell you what the exact numbers are
7 without doing a lot of analysis. That, that's the total
8 trips including, like I said, the redistributing and the new
9 trips so I don't know that, what the number should be.

10 Q According to Exhibit 195 on page 22, entering the
11 parking garage would be 567 vehicles.

12 A Correct.

13 Q Forget about redistributing, whether or not they
14 were the other side, where they are reflected is entering
15 off of, you know, off of that Glenallen west side stub.

16 MR. O'NEIL: Asked and answered.

17 MR. KAUFFUNGER: He hasn't answered. He's never
18 answered that question.

19 MS. ROBESON: Okay. Where are they -- are they
20 not reflected?

21 THE WITNESS: They should be reflected in some way
22 and to do it, I would have to do more analysis. They should
23 be reflected in some manner.

24 MS. ROBESON: Right.

25 THE WITNESS: Now --

1 MS. ROBESON: But your testimony is --

2 THE WITNESS: I cannot determine. I have to go
3 back --

4 MS. ROBESON: After the redistribution --

5 THE WITNESS: I have to see the effected
6 redistribution and the existing, and there's more to it. I
7 should be able to count for them in some way, yes.

8 MS. ROBESON: Okay.

9 THE WITNESS: But exactly how, I can't say without
10 doing further analysis.

11 BY MR. KAUFFUNGER:

12 Q And that analysis would be a CLV analysis.

13 A Correct.

14 Q Do you recognize that the applicant has not put
15 into the record what the CLV analysis will be future stages
16 with 1 and 2 in the a.m. peak hour with the grade
17 separation?

18 A I --

19 MS. ROBESON: If you know.

20 THE WITNESS: I do not know what's in the record
21 or not so I can't, so I do not know the answer.

22 BY MR. KAUFFUNGER:

23 Q You --

24 A I heard of something that might go in and I can't
25 say for sure.

1 Q A little while ago, you looked up on the chart and
2 could not find it, any reference to it, correct?

3 A What chart?

4 Q You referred --

5 MS. ROBESON: Okay. He's already said he couldn't
6 find it so I understand your point but I'm not going to
7 belabor it now.

8 MR. KAUFFUNGER: Okay.

9 THE WITNESS: I assume you're referring to the
10 2008 study, yes. I looked, I glanced at it and I could not
11 find it at first glance. If you want to give me an hour
12 break to analyze the whole study, maybe.

13 BY MR. KAUFFUNGER:

14 Q Okay. No. I certainly wouldn't want that. Okay.
15 Now, well, maybe I'll skip another one. I'm going to try
16 now to focus just on the staff report.

17 MS. ROBESON: Okay.

18 BY MR. KAUFFUNGER:

19 Q And plug in some of the information that we've
20 uncovered back into the staff report. Keep these documents
21 available, please, Mr. Axler.

22 MS. ROBESON: All of them.

23 MR. KAUFFUNGER: Yes. Now I can't find my staff
24 report.

25 MS. ROBESON: And the staff report, I believe, is

1 184.

2 MR. KAUFFUNGER: Yeah, but I want mine marked up.
3 No, no. No, no. This will be a disaster if I can't find
4 that. You can look in there but --

5 MR. ROBINS: While he's looking, Ms. Robeson, you
6 said Exhibit 184? Is that broken down into --

7 MS. ROBESON: 184(a).

8 MR. ROBINS: Is that -- oh, yeah. That's what I
9 was going to ask you. Is that the cover letter and then --

10 MS. ROBESON: 184, how did she mark that? 184 is
11 just 184 and that's the Planning Board recommendation. And
12 then 184(a) is his staff report.

13 (Discussion off the record.)

14 BY MR. KAUFFUNGER:

15 Q Now we're referring to Exhibit 184(a). It's the
16 staff report that was completed on 2/9/12. And some of
17 these things were, I would imagine, written by --

18 A Michael Brown?

19 Q Yeah, but I would assume you've got some
20 familiarity with it.

21 A Generally. Michael Brown has more familiarity,
22 obviously.

23 Q I'm going to try and skip over the things that --

24 A If you're interested in co-directories, we're
25 looking at the --

1 MS. ROBESON: You have to wait for a question.

2 THE WITNESS: Okay.

3 MR. KAUFFUNGER: Okay.

4 BY MR. KAUFFUNGER:

5 Q On the bottom of page 3, and just for clarity, in
6 the middle of the paragraph, you agree that the new traffic
7 report of May 2008, okay, your report addressed three
8 methodologies of accessing existing background and future
9 traffic conditions, the critical lane volume summation
10 technique, the Highway Capacity Manual delay procedures and
11 the Synchro queuing analysis.

12 A Correct.

13 Q Then it goes on to say considering the anticipated
14 grade separated interchange at Georgia and Randolph, the
15 analysis demonstrated that under each method, all nine
16 intersections, including Georgia Avenue/Randolph, would
17 operate within acceptable congestion standards and queue
18 levels. How do you reach that conclusion?

19 A I look at the data and compare it to the standards
20 that I'm required to base it on, and it met those standards.

21 Q What are the standards that you believe you're
22 required to use?

23 A The standards that I am required to do are in the
24 LATR and PAMR guidelines and they talk about for Metro
25 station policy area, CLVs of 1800 for queuing where the

1 queue between the intersection and upstream of the
2 intersection should not exceed 80 percent of its length.

3 MS. ROBESON: Now, which intersection, Georgia and
4 Randolph?

5 THE WITNESS: Well, obviously, that's going to be
6 an interchange before the others that were in.

7 MS. ROBESON: Oh, I see.

8 THE WITNESS: I believe it was Layhill and
9 Georgia.

10 BY MR. KAUFFUNGER:

11 Q Well, this refers to all nine intersections.

12 A Okay, nine. I got mixed up with some of that.
13 Yes. All -- yes.

14 Q Would operate within acceptable congestion
15 standards and queue levels.

16 A Yes. The queue lengths that all line were less
17 than 80 percent of the, the distance between that, that
18 particular intersection and the upstream.

19 Q So you were relying only on the LATR standards.

20 A I'm relying on the standards that I'm required to
21 review under, as adopted by the Planning Board, yes.

22 Q Okay. Have, has the LATR standards been
23 legislated to be used by the District Council for zoning
24 cases?

25 A That's a question you have to ask a hearing

1 examiner or attorney. I can't answer it.

2 Q To the best of your knowledge, has those been
3 legislated by, LATR standards been legislated for use at
4 time of rezoning by the District Council?

5 A It's my understanding that the LATR standards
6 were, as adopted by Planning Board, was, now I'm not sure,
7 I'm not an attorney, was accepted as part of a zoning text
8 amendment awhile back. I can't give you the details.
9 That's my basic understanding. I can't give you the
10 details.

11 Q Okay. Would you agree that LATR has been
12 legislated under the annual growth policy for use of
13 assessing traffic impacts at time of subdivision?

14 A Generally, yes. I can't -- yes. I can't give you
15 the history or -- I know the, the subdivision, the old
16 annual growth policy and subdivision stage does talk about
17 they got the LATR standards and the County Council to, to
18 review them. In fact, they have changed some of the
19 standards in the past.

20 Q If I were to review for you some legislation over
21 time, I wanted to see if you would agree with this, and that
22 is the state legislation that's part of the Regional
23 District Act that requires that an adequate public
24 facilities test be performed at time of subdivision. With
25 that authority, the District Council has set up the,

1 legislated the LATR --

2 MR. ROBINS: Question.

3 MS. ROBESON: Okay. No.

4 BY MR. KAUFFUNGER:

5 Q Now, was that --

6 MS. ROBESON: He can't answer that because he's
7 already said he's not an attorney and he doesn't know the
8 legal cites. And asking him, you know the legal cites but
9 he's said a number of times he doesn't so I don't think
10 you're going to gain anything there.

11 MR. KAUFFUNGER: Okay.

12 BY MR. KAUFFUNGER:

13 Q On page 4, the top of the page. This refers --
14 the second sentence. Staff found the transportation network
15 adequate to support the proposed development with
16 conditions. This was originally the position of David
17 Paine. Do you concur with that?

18 A Yes. David Paine reviewed it based upon the
19 standards, and that was his finding.

20 Q Okay. Staff's review of the additional
21 information focused solely on the queuing for the Georgia
22 Avenue/Randolph Road intersection and mitigation proposed by
23 the applicant for the adverse impacts identified in the
24 queuing analysis. Does, is the focus solely on the queuing
25 for the Georgia Avenue/Randolph intersection?

1 A That's why it was redone in 2008 I believe.

2 Q The distance --

3 A That was one of the reasons why it was, yes.

4 Q As we've gone over, the District Council has
5 talked about the road network. The applicant actually
6 included --

7 MS. ROBESON: Is there a question here?

8 MR. KAUFFUNGER: Yes. Okay.

9 BY MR. KAUFFUNGER:

10 Q Why did the staff focus solely on the queuing for
11 the Georgia Avenue/Randolph Road intersection when the
12 District Council's resolution talked about the road network?

13 MS. ROBESON: Well, he can't answer that because -
14 -

15 MR. KAUFFUNGER: He's part of the staff. I mean,
16 why do they focus on one thing when they were asked to do --

17 MS. ROBESON: Okay. I'm not going to allow. That
18 was the scope of the remand. Are you arguing with him about
19 what the scope of the remand should have been?

20 MR. KAUFFUNGER: No. I'm arguing why they
21 narrowed it from talking about a road network. The
22 applicant fully understood that we were going to be talking
23 about a number of intersections. They looked at nine
24 different intersections and --

25 MS. ROBESON: Okay. Mr. Axler, why did you just

1 look at, why did you ask for the queuing update on Randolph
2 and Georgia?

3 THE WITNESS: In 2008?

4 MS. ROBESON: What did I say?

5 THE WITNESS: The basic answer is at the request
6 of the remand, that's what we followed.

7 MS. ROBESON: So you, so what you're saying is you
8 didn't see the staff report, I mean the remand as bringing
9 in more than Georgia and Randolph.

10 THE WITNESS: It was not, it was not asked of,
11 asked of us.

12 MS. ROBESON: Okay.

13 THE WITNESS: We just followed, we just followed
14 with remand, we just followed what was asked of us.

15 MS. ROBESON: Okay. You may not agree with his
16 answer, and I'm not saying I agree with his answer, but that
17 is the answer.

18 MR. KAUFFUNGER: Okay.

19 BY MR. KAUFFUNGER:

20 Q In the last sentence of that paragraph, staff also
21 concurred with the applicant's analyses of level of service
22 and average intersection delays based on the Highway
23 Capacity Manual.

24 MR. ROBINS: Ms. Robeson, I'm going to just object
25 because Mr. Kauffunger is questioning Mr. Axler on a staff

1 report that he didn't even author. He's questioning him on
2 a staff report that -- there is another staff report that
3 Mr. Axler authored but it's not this one.

4 MS. ROBESON: Well, to the extent you can answer,
5 Mr. Axler, since it wasn't your staff report. Did Mr. Brown
6 leave? No. Okay. To the extent it wasn't your staff
7 report, can you answer to the best of your knowledge?

8 THE WITNESS: To the best of my knowledge, what
9 the, David Paine, who did the report, responded to what was
10 requested of him.

11 MS. ROBESON: Well, wait. Who is David -- I
12 thought David Paine left before 2008.

13 THE WITNESS: 2008?

14 MS. ROBESON: No?

15 MR. KAUFFUNGER: He left in 2008, the end of it I
16 think.

17 THE WITNESS: I believe he is the author of this.
18 Yes.

19 MS. ROBESON: Okay. So to the best of your
20 knowledge, can you answer -- now what's the question again?
21 What's your question?

22 BY MR. KAUFFUNGER:

23 Q Well, the question is how could the staff also
24 concur with the applicant's analyses of level of service and
25 average intersection delays based on Highway Capacity Manual

1 methodology. We just showed numerous examples --

2 MS. ROBESON: Wait. I don't understand. Okay.

3 Do you agree -- well, you're saying that given the examples
4 that we pointed out earlier where certain of the lane
5 approaches failing, failing, why did you find that that met
6 the Highway Capacity Manual test?

7 THE WITNESS: Is that a question?

8 MS. ROBESON: That's my question. When you saw
9 that certain approaches like on Georgia and was it Layhill,
10 the two left-bound turn lanes were Fs, why do you find that
11 that meets the Highway Capacity Manual and that methodology
12 even though there's one approach that is an F?

13 THE WITNESS: Because the findings that David
14 Paine made were based upon the, the criteria which we were
15 directed to review which was our guidelines. Yes, they look
16 at, there were, there are operational, meek operational
17 problems associated with the intersection. Also, I'd like
18 to add that the Synchro was based upon signal timing as of
19 now. With the interchange, the signal timing will be a lot
20 better because we do the signal timing, it's based upon the
21 worst congested intersection in the network and that's
22 Georgia and Randolph. With the interchange, you can
23 actually reduce the overall system congestion by reducing
24 the cycle, possibly reducing the cycle length, have better
25 turning to through the intersections and thus, improve the

1 overall operations of all the upstream/downstream
2 intersection.

3 MS. ROBESON: So what you're saying is --

4 THE WITNESS: Thus, if you apply the better, the
5 new signal timing that reflects the future, you'll find a
6 lot better operating conditions.

7 MS. ROBESON: Okay.

8 THE WITNESS: So yes, under the existing signal
9 time it shows failing. Both interchanges, it's a tremendous
10 improvement. So that's why --

11 MS. ROBESON: Now, which -- you testified earlier
12 I think that one of them, the signal timing had already been
13 changed. One of the intersections. Was it --

14 THE WITNESS: I believe Layhill and Georgia.

15 MS. ROBESON: -- Georgia and Layhill? Okay.

16 THE WITNESS: And that was as part of this -- I
17 can't say how it came to be but the state who owns the
18 intersection and the county who controls the signal timing,
19 one of them identified it and it was corrected or was
20 improved.

21 MS. ROBESON: Okay. Now, I have a question. Can
22 signal timing really make enough difference to reduce it
23 from an F to a B?

24 THE WITNESS: You mean an approach lane?

25 MS. ROBESON: Yes.

1 THE WITNESS: Yes.

2 MS. ROBESON: Oh, okay.

3 THE WITNESS: And it doesn't necessarily have to
4 be the approach that is being the F. It could be another
5 approach that is, has too much timing that if you give, if
6 you back them up, if you take the excess, unutilized green
7 time from the other approach and you give it to the
8 congested approach --

9 MS. ROBESON: So you're saying instead of having
10 one approach be an A and another approach be an F, they'll
11 adjust the signal timing so that more of the approaches are
12 a C or a D.

13 THE WITNESS: Yes.

14 MS. ROBESON: Okay.

15 THE WITNESS: Take excess capacity of the A, give
16 it to the F and then --

17 MS. ROBESON: All right.

18 THE WITNESS: So that's how -- these are
19 operational type issues.

20 MS. ROBESON: Okay. Mr. Kauffunger, I don't
21 jumped in on you with my own questions so.

22 BY MR. KAUFFUNGER:

23 Q I just want to -- again, in the document that is
24 the supplemental traffic analysis, 147(e), page 5, the
25 second paragraph, based, it says based on HCM Synchro

1 analysis, the intersection of Glenallen Road/Randolph Road
2 will operate at a level of service F during the a.m. peak
3 hour under total future stage 1 conditions with background
4 and total future stage 1 and 2 conditions. With both
5 improvement scenarios and minus signal timing optimizing,
6 the HCM analysis results indicate that the intersection is
7 projected to operate at level of service D or better during
8 a.m. and peak hours with both stage 1 and stage 2
9 development.

10 My question is why has the analyst introduced
11 these signal timing changes for optimization here and not
12 done it in all the other cases if all, if that's all it
13 takes?

14 A I can't speak for people who put this together or
15 David Paine who reviewed it.

16 Q Well, you haven't reviewed, you didn't review this
17 this time?

18 A I looked at it but I can't, I can't answer your
19 question directly, but that is the results that they found.
20 I'm saying the results does make sense from what I know
21 about traffic operations.

22 Q But it would be true overall. If you could make
23 some timing changes for improvement, you could make them
24 other places for improvement.

25 A Correct.

1 Q Okay. Were you the person that put together the
2 response to the question that Mr. Bronstein and I raised
3 about vacancy rates at Privacy World?

4 A Yes.

5 MS. ROBESON: And is that in the record?

6 THE WITNESS: Yes. It's the supplemental
7 analysis.

8 MS. ROBESON: Oh, okay.

9 THE WITNESS: On the last page of the Planning,
10 Planning Board agenda date 2/23/12 N.C.

11 MS. ROBESON: Okay.

12 THE WITNESS: It's the last --

13 MS. ROBESON: Gotcha.

14 THE WITNESS: -- last three pages.

15 BY MR. KAUFFUNGER:

16 Q In the staff report, in the one, two, three, four,
17 fifth paragraph down, it states, they argue that the
18 applicant's traffic analysis did not account for the recent
19 high vacancy rates at Privacy World. Were you aware that --

20 MR. ROBINS: Can you just -- are you on the
21 supplemental --

22 MR. KAUFFUNGER: This is page 4, okay.

23 MR. ROBINS: Oh, you're back --

24 MR. KAUFFUNGER: Counting up from the bottom, from
25 the bottom.

1 MR. ROBINS: I'm sorry.

2 MR. KAUFFUNGER: It's the second paragraph up. It
3 is the last sentence in that paragraph.

4 MR. ROBINS: You had transferred us over to the
5 supplemental report but --

6 MR. KAUFFUNGER: Yeah.

7 MR. ROBINS: -- now you're back on that.

8 MR. KAUFFUNGER: Staff report.

9 MR. ROBINS: Okay.

10 MR. KAUFFUNGER: I'm sorry.

11 MR. ROBINS: Okay. Go ahead.

12 MS. ROBESON: And your question?

13 BY MR. KAUFFUNGER:

14 Q Now, the question, okay, it states recent high
15 vacancy rates, okay? Were you aware that in the District
16 Council's resolution for the remand, that they identified
17 that there were many units unoccupied? And this was on page
18 3 of that, of the resolution.

19 A Not initially, but it was pointed out to me and I
20 did respond to it.

21 Q Okay. But it -- the point that I'm making is that
22 it wasn't a, it wasn't -- a question.

23 MS. ROBESON: Yes. You need to --

24 MR. KAUFFUNGER: Okay. Question. Okay.

25 MS. ROBESON: He said he's now aware thanks to

1 you.

2 THE WITNESS: If I may respond to the
3 supplemental. It wasn't part of the initial remand that
4 came down to me. It was part of the, it was part of the
5 discussion in the, in the discussion so it wasn't obvious to
6 me initially.

7 MS. ROBESON: Okay. That's fine.

8 BY MR. KAUFFUNGER:

9 Q Did you do a formal analysis to ascertain what the
10 vacancy rate was at Privacy World?

11 A The percent or the impact, traffic impact?

12 Q The percentage of unoccupied units.

13 A No, I did not. Someone suggested 40 percent.

14 Q We did.

15 A And I don't know the source of it but I just use
16 that as a hypothetical starting point to do my analysis.
17 It's impossible to do this without going to the, without
18 going back to the, the owners, the operators of the property
19 and find what were your vacancy rates in 2008 and 2000, it
20 would be impossible to do without a lot of extra work.

21 Q Okay. Do you know the Eisenstats (phonetic sp.)
22 or do you know Mr. Eisenstat?

23 A I don't know, recall the name.

24 Q The current owner, okay. Fine.

25 A I don't know the current owner.

1 Q On page 5 of the staff report again, Exhibit
2 147(a) --

3 MS. ROBESON: No, wait.

4 MR. KAUFFUNGER: No, 184(a). Okay.

5 BY MR. KAUFFUNGER:

6 Q On the, under the section called context, last
7 paragraph, last sentence, it is acknowledged that
8 construction is underway for a 1200 space parking garage on
9 the site with development plans for a fire station. Why did
10 you not make an effort to really ascertain whether or not
11 all of this was properly addressed in the traffic studies?

12 A Because the parking garage was listed in the 2007
13 traffic study as being part of the background development so
14 it was, it should have been included. And the fire station,
15 the mentor, the mentor referral I worked for, I knew the
16 number of site-generated trips in p.m. peak was almost zilch
17 because the shifts of the fire station people who work there
18 and I knew the general traffic generation from the fire
19 station. I should also add fire station currently is at
20 Georgia and Randolph which is, which is obviously, the
21 critical intersection. Somehow, it functions and people
22 arrive there and now they're moving it to a less congested
23 intersection. That would be a better location but, you
24 know, firefighters isn't, a fire station does not bring a
25 big factory of employees coming and going.

1 MS. ROBESON: For peak hour.

2 THE WITNESS: Yeah. With peak hours. People
3 coming and leaving during the peak hours.

4 BY MR. KAUFFUNGER:

5 Q On that same page in the staff report, page 5,
6 next paragraph down, it repeats that the hearing examiner
7 and the County Council will persuade that in these case,
8 traffic analysis based solely on CLV standard would not
9 adequately assess traffic conditions on area roads. This
10 constant repeating in all of the documents has, has it
11 convinced you that CLV is not adequate to assess traffic
12 conditions?

13 A You have to ask the question more precisely. At
14 an overall general or for operation of a specific
15 intersection?

16 Q Okay.

17 A So I'm not sure what you mean.

18 Q Yeah. And then further, further down, we seem to
19 debate this regularly but it's recognized in this staff
20 report that the Council remand asked for an analysis of the
21 proposal's impact on the roads and the surrounding area
22 including an analysis of Georgia/Randolph, but it's really
23 focused -- do you agree that the remand asked for an
24 analysis on the roads in the surrounding area?

25 A In generality. Then it went on to ask specific

1 questions which we responded to the specific questions.

2 Q Again to the staff report, on page 6, top of the
3 page, the 2008 traffic analysis included a generalized
4 average of four legs of each intersection, queuing analysis
5 of nine intersections in the impact area. What is that
6 generalized queuing analysis?

7 A I'm not sure why -- they did a queuing analysis.
8 Generalized doesn't add anything to the sentence, but they
9 did a queuing analysis. 2008, did a queuing analysis of the
10 nine intersections.

11 Q Okay. So then it's correct that the more detailed
12 queuing analysis of each leg of the -- well, that's not
13 important for me. Okay. Further in that same paragraph,
14 since the 2008 generalized average queuing analysis of the
15 nine intersections did not raise any red flags, staff did
16 not require more detailed queuing analysis of the
17 intersection other than the Georgia/Randolph intersection.
18 There were no red flags?

19 A Correct.

20 Q Okay.

21 A And like we said before, what you pointed out was
22 operational issues that was based upon the data which the
23 Synchro was based on.

24 Q We have rather limited queuing analysis in the
25 technical appendix, and again, that's 147(f), but I would

1 like to look at a few. For instance, let's look at the
2 queuing analysis done for Layhill and Georgia, and that's on
3 pages 186. Just look at the first one, 186. I've got to
4 get myself straightened away here. Okay. This was, this
5 queuing analysis, again, was done for Layhill and Georgia.
6 It's future, total future stage 1 and 2 a.m. in the peak
7 hour, and on the lane that we've been discussing is a
8 problem lane which is the westbound left of Layhill Road.
9 It is showing a queue length of the 95th percentile of 936
10 feet.

11 A Is that a question or a statement?

12 Q Yes. Okay. Why is, why does not, that not raise
13 a red flag for you?

14 A Because that doesn't include the interchange.

15 Q What?

16 A That doesn't include the interchange.

17 Q Okay. So then let's go to 198. Same
18 intersection, Layhill and Georgia. This time total future
19 stage 1 and 2 a.m. peak hours, same period, but now with the
20 grade separation. Page 198.

21 A Yes.

22 Q Okay, correct? We're on the right intersection?

23 A Correct.

24 Q Now the queue length has improved. It's improved
25 from 936 feet to 814 feet.

1 A Correct.

2 Q Okay. However, my question for you is why is that
3 not a red flag in that it even violates the 80 percent
4 because per page 6, okay, now I'm going to go on page 6 --
5 thank you for picking that up for me.

6 MS. ROBESON: Page 6 of what?

7 MR. KAUFFUNGER: Page 6 of the staff report which
8 is 140, 184(a).

9 BY MR. KAUFFUNGER:

10 Q In the second paragraph.

11 A Yes.

12 Q Staff report, page 6.

13 A Yes.

14 Q Okay. Second paragraph. Okay. It's discussed
15 here about how Max and I were concerned about the queuing
16 distance on the southbound approach of Layhill Road at
17 Georgia Avenue. However, it's called the westbound approach
18 in the analysis. Staff reviewed the data for this
19 intersection and found the maximum acceptable storage
20 distance for this location is 438 feet, 80 percent of the
21 existing storage. But at any, the accept, the maximum
22 acceptable storage distance for this location 438 feet.
23 However, when you go to this analysis future with the grade
24 separation, it indicates that the length will be 814 feet.
25 It certainly seems --

1 A What's the page again, please?

2 Q What?

3 A Okay.

4 Q 198. Why don't we stick to this. Stick to what
5 we're looking at.

6 A Okay. All right.

7 Q Okay? My question is the study, the queues study
8 for total future stage 1 and 2 a.m. peak hour traffic with
9 grade separation in place shows that the queued length
10 westbound or southbound on Layhill Road is 814 feet. In
11 this paragraph 2 of this, the traffic, of your staff report,
12 it indicates that the maximum acceptable storage distance
13 for this location is 438 feet. Doesn't it fail and isn't
14 this a red flag of problems?

15 A I can't respond to that without further analysis.

16 Q What's the further analysis?

17 A That's why I was looking at, to try to see where
18 that number comes from.

19 Q Well, did you -- well, let me ask you this. Did
20 you do the calculation that is in the second paragraph, page
21 2 of Exhibit 184(a)?

22 A Page 2.

23 Q Page 6. Get to page 6.

24 A Yes.

25 Q Paragraph 2. Staff reviewed the data for this

1 intersection. Was that staff you who found --

2 A I reviewed the data and --

3 Q And did you find that the maximum acceptable
4 storage distance for this location is 438 feet?

5 A That's what I wrote in the memo. I can't, I can't
6 explain it but I'm not sure where the numbers come from.

7 Q Well, it also says, okay, that the existing
8 storage distance, which essentially is from Georgia Avenue
9 up to Glenallen, is 547 feet.

10 MS. ROBESON: Where are you now?

11 MR. KAUFFUNGER: This is, this is --

12 MS. ROBESON: This is, what is this?

13 MR. KAUFFUNGER: It is paragraph 2, page 6 --

14 MS. ROBESON: Of the staff report.

15 MR. KAUFFUNGER: -- of the staff report.

16 MS. ROBESON: Oh, okay.

17 MR. KAUFFUNGER: An analysis was done.

18 MS. ROBESON: Right.

19 MR. KAUFFUNGER: Okay.

20 MS. ROBESON: So you're saying --

21 MR. KAUFFUNGER: My first question is, is this his
22 analysis.

23 MR. ROBINS: He's looking -- this is southbound
24 Georgia.

25 MR. KAUFFUNGER: The southbound Georgia, westbound

1 -- no.

2 MR. ROBINS: This is southbound Georgia.

3 MR. KAUFFUNGER: Okay. It doesn't make sense.

4 MS. ROBESON: That's where I was getting confused
5 because --

6 MR. KAUFFUNGER: Yes. It doesn't make sense.

7 MS. ROBESON: -- I thought you were taking
8 westbound Layhill.

9 MR. ROBINS: Yes. Mr. Kauffunger is referring to
10 the wrong --

11 MR. KAUFFUNGER: Well, that's why I was --

12 THE WITNESS: 2 is Layhill.

13 MR. KAUFFUNGER: Okay. Well, the way I am
14 reading, in the meeting with staff, okay, Mr. Kauffunger,
15 Mr. Bronstein raised concerns about the queuing distance at
16 the southbound approach of Layhill Road at Georgia Avenue.
17 What we, what our concern was, and it's been because it was
18 my community's concern, it is the approach of Layhill Road
19 to Georgia Avenue. That's what we, that's what I raised
20 with them, okay? Now --

21 MS. ROBESON: So, okay.

22 MR. KAUFFUNGER: Staff reviewed the data for this
23 intersection and found that the maximum acceptable storage
24 distance for this location is 438 feet. That's what it
25 says.

1 MS. ROBESON: Well, I don't, I'm not sure I'm
2 looking at the same intersections because it says -- when it
3 says southbound approach of Layhill at Georgia, is that
4 southbound Georgia where it intersects with Layhill?

5 MR. KAUFFUNGER: What, what confusion here is that
6 in reality, in this area, Layhill Road goes north and south,
7 okay? What the applicant has accepted the standard, that
8 Georgia Avenue is the north-south road, so when they talk
9 about Layhill in this area, they talk about it as being
10 westbound.

11 MS. ROBESON: Right, but what I think -- well, Mr.
12 Axler, can you look at page 6? It says the southbound
13 approach of Layhill at Georgia Avenue. Were you looking at
14 southbound, the southbound Georgia approach, or were you
15 looking at the westbound Layhill approach as you were --

16 THE WITNESS: Southbound Georgia Avenue. North-
17 south is Georgia Avenue.

18 MS. ROBESON: Okay. I just want to make sure that
19 we're looking at the same -- I understand your question.
20 It's a good point.

21 MR. KAUFFUNGER: The whole reason that I brought
22 this up, this is a major issue.

23 MS. ROBESON: Yes.

24 MR. KAUFFUNGER: It's what I took photographs of
25 in the record.

1 MS. ROBESON: Okay.

2 MR. KAUFFUNGER: It's what Ms. Vergagni spoke to.
3 It's what a number of people spoke to. It's about what they
4 often call southbound Layhill.

5 MS. ROBESON: But --

6 MR. KAUFFUNGER: How it gets switched over, over
7 to --

8 MS. ROBESON: Mr. Axler, if you remember this
9 report, were you analyzing, right or wrong, I just want to
10 make sure we're looking apples to apples as far as
11 intersections, were you looking at southbound Georgia queue
12 or were you looking at westbound Layhill queue?

13 THE WITNESS: Southbound, when I say southbound, I
14 would refer to Georgia.

15 MS. ROBESON: Okay.

16 THE WITNESS: So, yes.

17 MS. ROBESON: Where is the southbound Georgia at
18 Layhill? Well --

19 MR. ROBINS: The information?

20 MS. ROBESON: Yes.

21 MR. ROBINS: Page 10 of the, of the 2008 study.

22 MS. ROBESON: Page 10, 2000 --

23 MR. ROBINS: And that takes it out to total future
24 conditions stage 1 and 2 without the interchange and then
25 you --

1 MS. ROBESON: Okay. So what it sounds to me like
2 is that there was a miscommunication that, Mr. Kauffunger,
3 you intended to ask for westbound Layhill and what Mr. Axler
4 analyzed was southbound Georgia. No? Because the numbers
5 he quotes in the staff report, if I'm not wrong, where is
6 number --

7 MR. ROBINS: Intersection no. 4.

8 MS. ROBESON: Yes.

9 MR. ROBINS: And look right in the middle where it
10 says SB.

11 MS. ROBESON: Yes. I think, I think that --

12 MR. KAUFFUNGER: Okay. What page are we on?

13 MR. ROBINS: Page 10.

14 MR. KAUFFUNGER: Page 10.

15 MR. ROBINS: Of the report.

16 MS. ROBESON: Of the, 147(e). Yes, Mr. Afzal.
17 You need to come up and I need to swear you in if you're
18 going to say something.

19 MR. AFZAL: I just wanted to give you an
20 explanation for --

21 MS. ROBESON: No, but I know. I have to swear you
22 in and are we out of chairs? Can we pull up a chair?

23 (Discussion off the record.)

24 MS. ROBESON: Okay, Mr. Afzal, can you raise your
25 right hand?

1 (Witness sworn.)

2 MS. ROBESON: Please state your name and business
3 address for the record.

4 MR. AFZAL: Khalid Afzal with the Montgomery
5 County Planning Department.

6 MS. ROBESON: Okay, great. What did you want to
7 say?

8 MR. AFZAL: I just wanted to offer you an
9 explanation that if you look at on the same staff report --

10 MS. ROBESON: Yes.

11 MR. AFZAL: -- the attachment further on is a memo
12 from Ed Axler to Michael Brown.

13 MS. ROBESON: Yes.

14 MR. AFZAL: Dated January 17th. On page 2 of that
15 memo, on one, two, three, fourth paragraph, it's the same
16 language that goes in the staff report about Georgia and --
17 so if you look at that memo, it says for the queuing
18 analysis, worst case scenario in 2008 was the southbound
19 approach with Georgia Avenue at the Layhill Road
20 intersection.

21 MS. ROBESON: Okay.

22 MR. AFZAL: In the morning peak hour, observed to
23 have a queuing distance of 420 feet, same number that's been
24 mentioned on the previous report. And the same number, 189
25 feet, and 547, 438.

1 MS. ROBESON: Good answer.

2 MR. AFZAL: What happened was that on this
3 somehow, again, it's not Mr. Axler's mistake, that the front
4 of the memo switched Layhill at Georgia Avenue southbound.

5 MS. ROBESON: And it should have been --

6 MR. AFZAL: But in fact, it should have been
7 southbound, according to Mr. Axler's memo, southbound
8 approach of the Georgia Avenue at Layhill Road intersection
9 are these numbers 420, 438, 80 percent and everything.

10 MS. ROBESON: Okay. So he looked at southbound
11 Georgia --

12 MR. AFZAL: That's what the --

13 MS. ROBESON: -- at the --

14 MR. AFZAL: At Layhill.

15 MS. ROBESON: Okay.

16 MR. AFZAL: So it seems to me that that's what
17 happened, that the two roads got switched. Southbound which
18 one.

19 MS. ROBESON: Okay. I see what you're saying.
20 So, Mr. Kauffunger, it does sound like when you match the
21 numbers up, I think Mr. Afzal is correct, that what Mr.
22 Axler was really responding to -- okay.

23 MS. ROBESON: Well, let me ask you, Mr. Axler, was
24 the southbound at Layhill, no, the southbound on Georgia at
25 Layhill, was that the worst intersection identified, do you

1 remember?

2 THE WITNESS: Yes.

3 MS. ROBESON: Okay. So I think, Mr. Kauffunger,
4 what happened, and, is that the way he, I think what
5 happened is there are two different approaches. Is that
6 what you're saying, Mr. Afzal, that the approach analyzed
7 with southbound Georgia at its intersection with Layhill and
8 not westbound, westbound-southbound Layhill at Georgia.

9 MR. AFZAL: That's what Ed Axler's memo is saying
10 here.

11 MS. ROBESON: Okay. All right.

12 MR. AFZAL: I'm not saying those are the numbers
13 exactly that were stated which intersection, but the
14 language in Ed Axler's memo says it's southbound Georgia at
15 Layhill, not southbound Layhill at Georgia.

16 MS. ROBESON: At Georgia, okay.

17 MR. KAUFFUNGER: I would also like to point out
18 that there were footnotes when we're looking at 98 and
19 westbound Layhill.

20 MR. ROBINS: Where?

21 MR. KAUFFUNGER: On page 198.

22 MS. ROBESON: Of which document?

23 MR. KAUFFUNGER: Of 147(f), the appendix.

24 MS. ROBESON: Okay. I see.

25 MR. KAUFFUNGER: Under the queuing analysis.

1 MS. ROBESON: So you're saying the westbound lefts
2 approach, on Layhill approaching Georgia exceeded the 95th
3 percentile.

4 MR. KAUFFUNGER: Well --

5 MS. ROBESON: Is that what you're saying?

6 MR. KAUFFUNGER: I'll ask it as a question.

7 BY MR. KAUFFUNGER:

8 Q Mr. Axler, again in this movement of westbound
9 lefts, is, what is the VC ratio?

10 A 1.16.

11 Q Okay. Which means in terms of the volume to
12 capacity.

13 A It means that for that one approach, the volume
14 of, the volume of traffic ceased fastly for that one
15 approach.

16 Q Now, go up to the queue length of the 95th
17 percentile. By the way ,what is the 95th percentile?

18 A It's instead of working at the very, very worst
19 case, you look at five percent less the worst case that ever
20 could happen.

21 Q Okay.

22 A Best way to explain it.

23 MS. ROBESON: In terms of distance --

24 THE WITNESS: In terms of --

25 MS. ROBESON: -- between the two intersections.

1 THE WITNESS: In terms of queuing.

2 MS. ROBESON: Yes. We had that testimony before.

3 MR. KAUFFUNGER: Yes. Okay.

4 BY MR. KAUFFUNGER:

5 Q Which then could mean that the 18, 814 feet is
6 actually going to be slightly longer, the actual queue, as
7 you would see it because you're discounting the last five
8 percent of the cars.

9 A It could --

10 Q Is that what you just said?

11 A Yes. It's 95 percentile, and the very worst case
12 on the very worst day could be longer.

13 Q Okay. There's a footnote there also. Could you
14 tell us what that footnote pertains to?

15 A When 95 percent volume exceeds capacity, queue may
16 be longer.

17 Q Okay.

18 A Because of simulation model, based upon lots of
19 assumptions of signal timing and other things. And it's
20 not, none of these numbers are exact science.

21 Q Is --

22 MS. ROBESON: Well -- Oh, go ahead.

23 BY MR. KAUFFUNGER:

24 Q Is this generally accepted transportation science?

25 A In the, in that we look at the average, yes, and

1 in that this is a one name that operationally is not
2 functioning well, it would point out to an operation, that
3 there's an operational problem as I testified and I can't
4 say as, that it was an operational problem that was
5 identified and corrected by changing the signal timing.

6 MS. ROBESON: Well, can I ask -- oh, okay. That
7 was my question.

8 THE WITNESS: And then --

9 MS. ROBESON: We had testimony last time that,
10 from Ms. Randall, that the state would adjust the signal
11 timing for the whole system. Would that include this
12 intersection?

13 THE WITNESS: Yes, but this particular
14 intersection was, the single timing was changed sometime in
15 2010 to --

16 MS. ROBESON: Oh, so this has already been
17 retimed.

18 THE WITNESS: Yes.

19 MS. ROBESON: Okay.

20 THE WITNESS: Besides the --

21 MS. ROBESON: Do we have any -- oh, I guess I
22 can't ask you that. I was going to say do we have anything
23 in the record for a 2011 queue time, but that's okay. Okay.
24 Thank you.

25 THE WITNESS: So it's an -- I have always been

1 asked CLV, and this looks at the whole intersection and
2 where there's specific operational improvements. In this
3 case, it was identified and corrected.

4 MS. ROBESON: Okay.

5 BY MR. KAUFFUNGER:

6 Q What is the 80th, the 80 percent storage distance
7 that would be found to be acceptable?

8 A You mean how long is it?

9 Q Yes. In feet.

10 A Well, what it says in the table which I'll look
11 up.

12 MS. ROBESON: Well, does he have to look it up to
13 save time? I mean, I'm guessing that if the 95th percentile
14 -- can you just tell him to assume what the 80th percentile
15 is so --

16 THE WITNESS: I'm looking at -- it's on this page
17 right here.

18 MS. ROBESON: Oh.

19 THE WITNESS: Are you talking about westbound?

20 BY MR. KAUFFUNGER:

21 Q Yes.

22 A Or southbound?

23 Q Westbound.

24 A 826 feet.

25 Q Okay. Are you maintaining then that at 814 feet

1 for the 95th percentile, which is 12 feet, maybe half a car
2 length short, that this, it doesn't indicate a failure in
3 queuing distance when you add in the fact that the queue may
4 be longer than estimated here because of the VC ratio plus
5 the fact that you're only counting the, you're only looking
6 at the 95th percentile, and that's not the standard that's
7 in the LATR?

8 A The standard is 80 percent storage distance and it
9 does meet it but again, it's an operational problem that was
10 identified and fixed. But the standard is met. 826 is less
11 than 814.

12 MS. ROBESON: 814 is less.

13 THE WITNESS: Yes. I'm sorry.

14 BY MR. KAUFFUNGER:

15 Q Did you meet with the applicant and his expert
16 since you've been asked to appear here today?

17 A I met with them and I, I meet with anyone who
18 wants -- if you wanted to meet with me and talk, I would
19 have met with you. I'm open. I'm unbiased, yes.

20 Q Okay.

21 A And I think I met with you and your fellow
22 citizens two or three times.

23 Q Once for me.

24 A Okay. I met --

25 MR. BRONSTEIN: Well, you saw two of us.

1 MR. KAUFFUNGER: Yeah.

2 BY MR. KAUFFUNGER:

3 Q Okay. You saw two --

4 A I mean like two or three meetings.

5 Q No. You saw --

6 MS. ROBESON: Okay.

7 MR. KAUFFUNGER: Okay.

8 MS. ROBESON: We're questioning here.

9 MR. KAUFFUNGER: Yes.

10 BY MR. KAUFFUNGER:

11 Q In the conclusion --

12 A Page?

13 Q -- of the staff report, page 6, first paragraph,
14 and again, that's 184(a), why, despite direction of the
15 District Council -- go back to the statement, based on the
16 staff's analysis of new evidence submitted by the applicant,
17 staff believes the CLV values for Georgia Avenue and
18 Randolph Road intersection will be below acceptable
19 congestion standards. Why do you persist in going back to
20 CLV?

21 A To be thorough most likely.

22 MS. ROBESON: Okay. Mr. Kauffunger, how much more
23 do you have in cross --

24 MR. KAUFFUNGER: I'm just about ready to wrap up.

25 MS. ROBESON: Okay.

1 BY MR. KAUFFUNGER:

2 Q Since in this opening paragraph you don't even
3 mention -- why is it you don't mention Highway Capacity
4 Method results?

5 A Because the remand only talked about queue.
6 Queuing.

7 Q For one intersection.

8 A Are you asking a question?

9 Q I'm just trying to figure out how to ask it. All
10 right. I'm not sure -- all right. I think it's the third
11 sentence, maybe it's the fourth. It states that the staff
12 finds that with the recommendations listed above, the
13 transportation network is adequate to support the proposed
14 development.

15 I have reviewed with you the backups and the HCM
16 level of service at the intersection of Layhill and Georgia,
17 at Glenallen, at Glenallen and Georgia. I ended up skipping
18 over Randolph in Glenallen. With each of these
19 intersections, the HCM analysis shows serious problems after
20 the, after the development of the grade separation and the
21 full build-out of stages 1 and 2.

22 MR. ROBINS: Objection. Mr. Kauffunger's opinion.
23 He's not even asking a question again.

24 MR. KAUFFUNGER: Okay.

25 BY MR. KAUFFUNGER:

1 Q After our review of the HCM analysis, how can you
2 come to the, which demonstrates that there are intersections
3 operating at a level of service F, how can you come to the
4 conclusion that the transportation network is adequate to
5 support the proposed development?

6 A I'd like to go back to the previous question. The
7 conclusion that you reference on page 6 of the memo is a
8 summary of my conclusion on page 3 of my inserted memo, and
9 it --

10 Q Whoa, whoa, whoa. Page 6 of -- okay.

11 A You --

12 Q Page 6 of this memo?

13 A You --

14 MS. ROBESON: 184,

15 THE WITNESS: You mentioned the summary asking why
16 they say the CLV.

17 MS. ROBESON: Yes.

18 THE WITNESS: Okay. That summarized my, my
19 concluding paragraph on my, my attached memo which is page 3
20 of my attached, or summarized David Paine's, mine or David
21 Paine's, yeah, my January 17th memo so and it just, which
22 referenced back to 2008 so.

23 BY MR. KAUFFUNGER:

24 Q And what does it, what does it say?

25 A Well, in other words, it was trying to be thorough

1 in saying the 2011 compared, versus, was, CLVs were looked
2 at, we're updating 2011 and we looked at it in comparison to
3 2008, so we're just trying to be thorough and make sure we
4 cover all the bases. It was just a summary that was -- the
5 answer to your question is that we applied the standards as
6 we, as we were required under, that were required and it
7 meets the --

8 Q What required by what?

9 A The LATR standards and under the practices that
10 we've been doing in the Planning Board staff, and we found
11 it acceptable, plus the fact that the interchange is a
12 tremendous improvement. Like I said before, it will improve
13 all the signal timing, all the queues upstream and
14 downstream by providing much compact queues, better
15 operational flows and all the previous, then and because of
16 that, I found that it was acceptable. Also, you have to
17 remember that the 2008 study was, was utilizing the existing
18 signal timing and, which will be vastly improved. So in
19 other words, the interchange mitigates the impact of such
20 trips.

21 Q Does CLV consider signal timing in its analysis?

22 A In fact, CLV considered the idealized signal
23 timing, the optimum signal timing, and that would be a
24 better, would be a good futuristic picture of what could
25 happen, should happen I should say with the interchange when

1 all the signal timing is improved, is improved.

2 MR. KAUFFUNGER: Pardon me a moment.

3 Q I'm going to ask you some critical questions about
4 the Critical Lane Volume technique.

5 MS. ROBESON: Wait. Wait. Are you trying to
6 bring out that it doesn't measure delays by different
7 approaches, from different approaches because we have a lot
8 of that in the record already.

9 MR. KAUFFUNGER: It also doesn't really look at
10 the lanes and the approach capacity.

11 MS. ROBESON: And I --

12 MR. KAUFFUNGER: You've got all of that.

13 MS. ROBESON: I do have all of that.

14 MR. KAUFFUNGER: Okay.

15 MS. ROBESON: I think what he said is that he
16 looked at it both from HCM and CLV to be thorough.

17 MR. KAUFFUNGER: I don't see that in his
18 conclusion. His conclusion only talks about --

19 MS. ROBESON: Okay. Ask --

20 MR. KAUFFUNGER: Okay.

21 BY MR. KAUFFUNGER:

22 Q In your conclusion, you discuss and put emphasis
23 on the discredited CLV approach but I see no direct
24 addressing of the HCM results for the various intersections.

25 A Is that a question?

1 Q Yes. Is there, is there here?

2 A I would -- that's a summary by Michael Brown of my
3 memo. Please refer to my memo which is --

4 MS. ROBESON: Let me ask you something, Mr. Axler.
5 It looked to me like HCM was part and parcel of the queuing
6 analysis. Is that incorrect?

7 THE WITNESS: Yes. It was done --

8 MS. ROBESON: So you called it a queuing analysis
9 in your memo, is that correct?

10 THE WITNESS: Yes.

11 MS. ROBESON: Did it use HCM methodology

12 THE WITNESS: One of them did and one of them used
13 local area review I believe.

14 MS. ROBESON: With the observed queue.

15 THE WITNESS: Yes.

16 MS. ROBESON: For the queuing.

17 THE WITNESS: So there were two different
18 methodologies used. If there's confusion on that part,
19 maybe it should have been clarified.

20 MS. ROBESON: Okay.

21 BY MR. KAUFFUNGER:

22 Q Okay. Why, in the conclusion, did you not
23 consider the negative or the LOS results in the HCM study
24 that showed that there would be negative impacts on several
25 intersections as a result of the proposed stage 1, stage 2

1 developments?

2 A I believe I answered that question a couple times
3 already.

4 MS. ROBESON: He did. He said that it takes in,
5 that the existing HCM volumes don't take into account system
6 timing, signal timing, and I asked him can the signal
7 timing, and I'm going to ask you another question too, can
8 the signal timing fix those approaches and he said yes, it
9 is capable of fixing those particular approaches. Now, my
10 question is at Layhill and Georgia that's right, the
11 westbound approach to Layhill as it approaches Georgia
12 Avenue, which was the 814 queue, could signal timing at that
13 -- well, that was a 814 queue in 2008. Could signal timing
14 address that large a queue?

15 THE WITNESS: Yes.

16 MS. ROBESON: Okay.

17 THE WITNESS: In the same way I said before. You
18 take where they have excess queue in the morning and you,
19 and you, instead of having no cars going through an
20 intersection, you reduce the green time and give it more to
21 the congested approach.

22 MS. ROBESON: Okay. Okay. Go ahead, Mr.
23 Kauffunger. He has answered numerous times how he came to
24 the conclusion that this was acceptable even though some
25 approaches were failing.

1 BY MR. KAUFFUNGER:

2 Q Why haven't we solved all the problems of the
3 intersections in Glenmont by doing signal timings everywhere
4 if that's all that needs to be done? I recognize. Even as
5 I recognize that you do improve things with signal times,
6 why hasn't it been done?

7 MS. ROBESON: Can you answer that, Mr. Axler?

8 THE WITNESS: Easily. If the citizens find a
9 problem, contact MCDOT and make them aware of the problem.

10 MS. ROBESON: Okay. Well, I think that's been
11 done. I'm going to venture, before mister --

12 MR. KAUFFUNGER: Oh, my God.

13 MS. ROBESON: -- Mr. Kauffunger hangs himself on
14 his tie, I think that also, the grade-separated interchange
15 is a factor predicted out into the future. That would be my
16 guess. But any other questions?

17 MR. KAUFFUNGER: No. I'm as exhausted as you are.

18 MS. ROBESON: Okay. Mr. Bronstein, did you have
19 questions?

20 MR. BRONSTEIN: Yeah, a couple. Should I sit
21 here?

22 MS. ROBESON: You can sit where Mr. Afzal -- thank
23 you, Mr. Afzal.

24 CROSS-EXAMINATION BY MR. BRONSTEIN

25 BY MR. BRONSTEIN:

1 Q I -- some of these questions are in fact partially
2 to the beginning of our morning here. When, and just as a
3 background, when Dick and I met with you on the 9th of
4 January, and I think Vicki was there also, January 9th, I
5 got a card from you. It says Ed Axler, planner/coordinator,
6 and then when I got the e-mail that you sent asking Dick to
7 refine his questions, it identified you as area 2
8 transportation planner. Was this, the thing that just said
9 planner/coordinator an old card?

10 A They're both right. Planner/coordinator is my
11 official job title in the Planning Commission. My
12 functional, my functional title would be area 2
13 transportation planner.

14 Q When did you become a transportation planner down
15 at the Planning Department roughly?

16 A Twenty-seven years ago.

17 Q Oh, so you were a transportation planner from the
18 beginning.

19 A Yes.

20 Q Okay. And then when there was conversation
21 regarding your education, please refine for me or clarify
22 are you a traffic engineer?

23 A Yes.

24 Q And you're certified in the state of Maryland as a
25 traffic engineer?

1 A Please explain.

2 Q Don't ask me to explain.

3 A You mean the --

4 MS. ROBESON: Are you a licensed civil engineer?

5 THE WITNESS: I'm a professional engineer and I
6 took the test for civil engineer. Under Maryland and
7 Virginia state, I took the exam as a civil engineer and am a
8 registered professional engineer.

9 BY MR. BRONSTEIN:

10 Q So tell me the difference between a traffic
11 engineer and a traffic planner, please.

12 A It's just titles. Engineer is, an engineer is --
13 I call myself an engineer because that's my degree. A
14 planner is my position title. I'm a planner/coordinator. I
15 work for a planning agency. So it's just a matter of
16 titles. A degree is engineer. Just like there's people who
17 work in the Planning Commission who are architects. They
18 don't call themselves architects, they call themselves
19 planners. Sometimes they might refer them to architects.

20 MS. ROBESON: Okay. I got the, I got the picture.

21 THE WITNESS: Yeah.

22 MS. ROBESON: Go ahead.

23 BY MR. BRONSTEIN:

24 Q There was a mention of a zoning or the zoning
25 analyst in the Planning Department. What is the party's

1 name that is the zoning analyst or if there are more than
2 one, what are their names?

3 A Well, Michael Brown was the zone analyst for this
4 remand and the person who did it before, I don't know who
5 did it in 2008. I didn't. David Paine worked on it. I'm
6 not sure who, who was, who he worked with 2008.

7 Q This is a matter of interest. I still have David
8 Paine's card. He's identified as a planning, transportation
9 planning, countywide planning. Also, Mr. Shariari (phonetic
10 sp.), Ed Amati (phonetic sp.). We knew them all.

11 MS. ROBESON: Okay. Mister --

12 MR. BRONSTEIN: Just background to my question.

13 MS. ROBESON: Okay.

14 MR. BRONSTEIN: I'm sorry.

15 BY MR. BRONSTEIN:

16 Q Going on, as a traffic planner and as a traffic
17 engineer, do you feel you have a responsibility to represent
18 and protect the public interest?

19 A Definitely. I always pride myself to be unbiased
20 with the public and the developer, to be totally unbiased.

21 Q And you're always open to the public noticing a
22 problem to feel free to call you.

23 A I always will listen to the public especially
24 since the citizens are the people who live out there and I
25 want to hear from them because I want to, because they can

1 see, they live out there and they, 24 hours, on a regular
2 basis.

3 Q And do you recall when Ms. Vergagni and Mr.
4 Kauffunger and I met with you on the night of January,
5 whenever a question came up, Mr. Afzal was there and Mr.
6 Brown, whenever a question on transportation came up, do you
7 remember that they referred to you for the answer?

8 A I would hope they would.

9 Q Okay. That about wraps it up for me.

10 MS. ROBESON: Okay. All right. So what we're
11 going to do is take a 40 -- do you have questions of Mr.
12 Brown, or Mr. Axler?

13 MR. ROBINS: Axler?

14 MS. ROBESON: Yes.

15 MR. ROBINS: Yes, we do.

16 MS. ROBESON: Okay. Let's take a 40, I think I
17 need a 45-minute break to eat, and we'll be back at 2. And
18 then do you have rebuttal?

19 MR. ROBINS: Ms. Randall for a limited, just a
20 limited amount.

21 MS. ROBESON: Okay. So we'll take a 45-minute
22 break, then we'll be back at 2:00 for questions from Mr.
23 Robins and then any rebuttal testimony.

24 (Whereupon, at 1:10 p.m., a luncheon recess was
25 taken.)

1 MS. ROBESON: Are you ready, Mr. Kauffunger and
2 Mr. Bronstein?

3 MR. KAUFFUNGER: Yeah, we're ready but Vicki, do
4 you still, would you still like to speak?

5 MS. VERGAGNI: I think I'm just going to pass.
6 I'm going to put it in closing argument.

7 MS. ROBESON: Okay. Mr. Robins, do you have any
8 questions for Mr. Axler.

9 MR. ROBINS: Mr. O'Neil has just a few.

10 MS. ROBESON: Oh, Mr. O'Neil. Okay.

11 MR. O'NEIL: Thank you.

12 REDIRECT EXAMINATION BY MR. O'NEIL

13 BY MR. O'NEIL:

14 Q Ed, I'm just going to ask a few questions related
15 to some of the, your testimony and also, some bigger big
16 picture issues involved with this case. And the first
17 question, first inquiry is isn't it true that what the
18 County Council or the District Council's remand required was
19 a queuing analysis, particularly at the intersection of
20 Georgia and Randolph?

21 A Yes.

22 Q And that queuing analysis --

23 A I thought it was two items in the remand.

24 Q Well, the queuing analysis that was required --

25 A Yeah.

1 Q -- or asked of the applicant was to be done
2 pursuant to the LATR guidelines, isn't that correct?

3 A Correct.

4 Q And didn't the applicant do that exactly as
5 requested?

6 A Correct.

7 Q And if I could ask you to review page 21, be
8 specific about the requirements of the LATR guidelines as
9 far as the --

10 MS. ROBESON: What's he reading from?

11 MR. O'NEIL: Page 21 of the LATR guidelines
12 regarding --

13 THE WITNESS: Which version is the official
14 version?

15 MS. ROBESON: You're going to have to tell me.

16 THE WITNESS: Because --

17 MS. ROBESON: They're not in -- you mean as far as
18 the record goes?

19 THE WITNESS: Yeah.

20 MS. ROBESON: We don't have them admitted so we
21 don't have to admit them because --

22 THE WITNESS: Because I have the 2004, 2008 or --

23 MR. O'NEIL: It's 2000 --

24 THE WITNESS: -- 2009, the current one. Which one
25 do you want me to reference?

1 MS. ROBESON: Well, I think the current one.

2 MR. ROBINS: It's the 2004 LATR guidelines which
3 the Council remand said apply, but this provision is the
4 same provision throughout.

5 MS. ROBESON: Well, okay. Let him ask.

6 THE WITNESS: Okay. Well --

7 BY MR. O'NEIL:

8 Q If I could refer you to the LATR guidelines, in
9 particular case, 21 --

10 MS. ROBESON: And which version, 2004?

11 MR. O'NEIL: This is the 2004 version.

12 BY MR. O'NEIL:

13 Q And if you could let us know precisely what the
14 LATR guidelines require in terms of queuing.

15 A First of all, if any CLV is over 1800, this
16 applies to Metro policy station areas, outside, this doesn't
17 apply, so if the CLV is over 1800, the queuing analysis
18 shall be performed for --

19 Q Can you --

20 A The existing queue shall be measured by the
21 applicant and the total, and the total traffic existing
22 background in site traffic and the planned roadway and
23 circulation changes shall be taken into account. The
24 average queue length on the weekday peak hour shall not
25 exceed 80 percent of the distance, distance to the adjacent

1 signalized intersection provided, provided the adjacent
2 intersection, intersections are great, are greater than 200
3 feet apart.

4 Q Is that 200 or 300 feet?

5 A I mean 300. I'm sorry, 300.

6 Q Okay. That's enough for the description.

7 A Yeah.

8 Q Thank you. And in addition to the queuing
9 analysis, did the applicant do an HCM and updated CLV
10 analysis?

11 A Yes, in I think 2008 version or -- yeah, 2008.

12 Q The 2008 study.

13 A Yes.

14 Q Correct. And in the HCM analysis, wasn't it clear
15 in the analysis that the intersections were not optimized?

16 A Yes.

17 Q And doesn't the grade-separated interchange
18 essentially solve the transportation problems in the area?

19 A Yes.

20 Q And you conclude in your staff report that the
21 traffic generated from these two zoning applications make up
22 the Glenmont Metrocentre, making up the Glenmont Metrocentre
23 would not adversely impact the surrounding area based on
24 your traffic analysis, correct?

25 A Yes, which is based upon the standard, LATR

1 guideline standards.

2 Q Okay.

3 MR. O'NEIL: I have no more questions.

4 MS. ROBESON: Okay. I just have a question. Mr.
5 Axler, you said the grade-separated interchange solves the
6 problems but that includes the timing adjustments, right?

7 THE WITNESS: Yes. The long explanation is the
8 greater, besides limiting the critical intersection, it will
9 result in improved network traffic signal timing.,

10 MS. ROBESON: Okay.

11 THE WITNESS: That's what the effect of it, yes.

12 MS. ROBESON: Any other questions?

13 MR. ROBINS: That's it for us.

14 MS. ROBESON: Okay. Mr. Kauffunger, any questions
15 based solely, solely on mister --

16 MR. KAUFFUNGER: No.

17 MS. ROBESON: No. Mr. Bronstein?

18 RECROSS-EXAMINATION BY MR. BRONSTEIN

19 BY MR. BRONSTEIN:

20 Q When Mr. O'Neil asked the question about the
21 remand language and he spoke of the queuing analysis as the
22 thing being asked for, the word before queuing analysis was
23 including meaning it, doesn't it mean that there are other
24 aspects than just the queuing analysis if we got that
25 important word including, is that correct?

1 A Are you asking me?

2 MR. BRONSTEIN: Well, who should I ask, Mr. O'Neil
3 or Mr. Axler?

4 MS. ROBESON: No. Mr. Axler. What are you
5 reading from?

6 MR. BRONSTEIN: This is the remand Resolution 16-
7 424 issued on January 15th of '08 from the County Council
8 sitting as the District Council on page 28.

9 THE WITNESS: What's the full phrase?

10 BY MR. BRONSTEIN:

11 Q The full phrase, gosh. Be remanded to the Hearing
12 Examiner by the applicant for the opportunity to present
13 additional evidence demonstrating that neither stage 1 or 2
14 or the combined stage 1 or 2 of the proposed Glenmont
15 Metrocentre would have a lack of adverse impact on traffic
16 in the surrounding area including, meaning not exclusively,
17 but including a queuing analysis for the intersection of
18 Randolph and Georgia and the methodology and standards
19 outlined in part V-A, maybe that's 5-A.

20 MS. ROBESON: Did you have an objection? What do
21 you want him -- what's the question?

22 THE WITNESS: Yeah. I'm not sure.

23 BY MR. BRONSTEIN:

24 Q Don't you think that other, when it uses the word
25 including, it doesn't narrow it only to a queuing analysis.

1 Wouldn't you agree that other things should be taken into
2 consideration including the surrounding traffic network, not
3 just a queuing analysis?

4 A I really can't answer the question. That's a --

5 MS. ROBESON: Well, can I ask you something?

6 THE WITNESS: That's a legal question.

7 MS. ROBESON: Do you think --

8 MR. BRONSTEIN: Wait a minute. Excuse me.

9 MS. ROBESON: No. No.

10 MR. BRONSTEIN: That's not a legal question.

11 MS. ROBESON: No.

12 THE WITNESS: It's the wording of a legal
13 document.

14 MS. ROBESON: Okay. Stop. Both of, both of you
15 stop talking. Mr. Axler, let me ask you this. Do you see
16 any queuing, is it your feeling, through one or the other or
17 the combination of queuing or of analysis in this case, that
18 there will be queues beyond the 80th percentile with the
19 grade-separated interchange?

20 THE WITNESS: I do not see it, that being an
21 issue.

22 MS. ROBESON: Okay. All right. Mr. Bronstein, is
23 that all your questions or --

24 MR. BRONSTEIN: I think that's essentially it.

25 MS. ROBESON: Okay. Thank you. Okay. You can

1 be, Mr. Axler, you are off the hot seat and you may be
2 excused. And you as well, Mr. Afzal. I know that -- Afzal.

3 THE WITNESS: Thank you.

4 MS. ROBESON: Thank you. Mr. Robins, do you have
5 any rebuttal testimony?

6 MR. ROBINS: I'd like to call Ms. Randall for

7 MS. ROBESON: Okay. You're still under oath, Ms.
8 Randall.

9 (Witness previously sworn.)

10 REBUTTAL EXAMINATION BY MR. ROBINS

11 BY MR. ROBINS:

12 Q Ms. Randall, regarding the scope of the remand, do
13 you believe that your work product has thoroughly addressed
14 the remand?

15 A Above and beyond the remand.

16 Q And can you describe briefly the various items
17 again that you did, not getting into the actual --

18 A Right.

19 Q -- incredible details but just for the Hearing
20 Examiner, just briefly describe.

21 A Yeah. The remand went to the intersection of
22 Randolph Road and Georgia Avenue. We looked at nine
23 intersections. We looked at the queuing at nine
24 intersections. We ran CLV, we ran HCM to produce a
25 projection of what the queues would be under the LATR

1 methodology. To predict what those queues would be with the
2 new system, we ran the alternate review procedure. The HCM
3 analysis also produces an intersection level of service as
4 well.

5 Q Okay. And you also studied mitigation?

6 A We did.

7 Q And that mitigation predominantly -- well, in the
8 2008 study, you, did you study an at-grade solution and a
9 grade-separated interchange?

10 A We did. At the time of 2008, we were not assured
11 of the funding for the interchange so we looked at both
12 at-grade as well as the interchange road improvements for
13 stage 1 as well as for stage 2. Stage 1 and 2. I should
14 correct the record.

15 Q Okay. And is it your opinion, do you believe that
16 the Council fully rejected CLV?

17 A No, I do not. I think that they felt that it
18 didn't address all of the issues that came up at the time of
19 the hearing. As Mr. Axler had indicated, for those
20 intersections where you have a CLV greater than 1800 which,
21 at the time of the 2006 study, they did under background
22 conditions, they want to see, and it's up to the staff to
23 ask for it according to the LATR guidelines, they are often
24 requested to do a queuing analysis. It was not that they
25 were rejecting CLV. They just didn't feel it gave the total

1 picture of what was occurring at the time of 2006-2007 time
2 frame.

3 Q Okay. And can you, speaking of the queuing
4 analysis that you did back in 2008, did you follow the
5 procedures and requirements that were set forth in, not only
6 in the remand but in the LATR guidelines?

7 A Yes. In the LATR guidelines, I want to make sure
8 everybody is clear because there were a couple of different
9 terms thrown around, the LATR guidelines are that the
10 average queue cannot exceed 80 percent of the distance
11 between the signalized intersections. So the queue recorded
12 in the back of Synchro was used only to project what the
13 change was going to be with the interchange.

14 MS. ROBESON: Right.

15 THE WITNESS: The 95th percentile queue is not an
16 average queue.

17 BY MR. ROBINS:

18 Q Can you express the importance of that statement?

19 MS. ROBESON: Can I ask a question. Going to, was
20 it page 190 --

21 MR. ROBINS: I think it was 198. Is that where we
22 were?

23 THE WITNESS: It doesn't really matter. Pick any
24 one.

25 MS. ROBESON: I know, but I want to do the one --

1 MR. ROBINS: I think it's -- look at page 198.

2 MS. ROBESON: 198.

3 MR. ROBINS: Yes.

4 MS. ROBESON: Okay. See the 814?

5 THE WITNESS: Yes.

6 MS. ROBESON: Okay. Explain why that's not a
7 problem.

8 THE WITNESS: 814. The distance, first of all,
9 the distance to the next intersection is over 1,000 feet.

10 MS. ROBESON: Okay.

11 THE WITNESS: The 80 percent of that distance,
12 which is the LATR standard, 80 percent of the distance, is
13 826 if I have, if my memory serves --

14 MR. ROBINS: Correct. Yes.

15 THE WITNESS: -- because I don't have that chart
16 in front of me. So this 814 distance may occur five percent
17 of the time.

18 MS. ROBESON: Okay.

19 THE WITNESS: May be this or greater five percent
20 of the time. That's with each signal site.

21 MS. ROBESON: Right.

22 THE WITNESS: But the LATR -- and this is a
23 theoretical queue. This is not based on actual observed
24 queue.

25 MS. ROBESON: Because you had to use Synchro to

1 project it out.

2 THE WITNESS: That's correct. And what will the
3 impact be from the interchange. So we wanted to understand.
4 Because it is an interchange as opposed to just simply a
5 right-turn lane, the timing at the intersection of Randolph
6 Road and Georgia Avenue is going to change significantly.
7 The whole system is going to change significantly. We held
8 the basic signal timing but changed the side splits as you
9 can imagine. So we changed the, we had to do a minor, not a
10 full-blown system optimization but a minor change to the
11 signal timing at that intersection. That has ramifications.
12 Even just doing one has ramifications for the signal system.
13 When you change one, you're affecting others. So that's why
14 you see a change in the distance for this queue between that
15 and without the interchange.

16 MS. ROBESON: Okay.

17 THE WITNESS: But again, this is a theoretical,
18 not an observed queue which the LATR guidelines and the
19 remand are very specific about.

20 MS. ROBESON: Right.

21 BY MR. ROBINS:

22 Q The remand requires, in fact, isn't that true, the
23 use of the LATR guidelines and the --

24 A It does.

25 Q -- methodology contained in the LATR guidelines --

1 A It does.

2 Q -- to do the queue.

3 A Yes.

4 Q Okay. With the LATR queuing analysis that you did
5 and with the grade separation, do the intersections operate
6 acceptably?

7 A Yes. All of the intersections that we looked at.
8 The majority of the intersections were already passing
9 without running the HCM Synchro but there were two
10 intersections that were called out when we ran the analysis
11 and showed that chart that we focused our attention on
12 specifically because they have queues that were reaching
13 that distance without the improvement. It was Georgia and
14 Randolph, Layhill and Georgia, and then we also pulled out,
15 because citizens had been concerned about it, the
16 intersection of Layhill and Glenallen.

17 Q Not from a capacity point of view though.

18 A Not from a capacity point of view.

19 Q Is that correct?

20 A But just in reading the total remand.

21 MS. ROBESON: Right.

22 THE WITNESS: Not just the directions at the
23 bottom but the total remand.

24 MS. ROBESON: Right.

25 THE WITNESS: And understanding where some of the

1 issues might be within the community.

2 MS. ROBESON: Right.

3 BY MR. ROBINS:

4 Q Okay. I want to ask you a question about just the
5 HCM approach and some of the testimony that you heard
6 regarding individual lengths versus the operation of the
7 intersection as a whole. Could you please explain to the
8 Hearing Examiner just your understanding of the HCM approach
9 and how it, how it works?

10 A Right. First and foremost, the analyses that we
11 did, we did not optimize the system and I think I had this
12 on direct testimony initial. Now that we know that they are
13 going to be optimized, the results that we get in this will
14 be better. But it's more important to look at the overall
15 intersection level of service. That's what the guidelines
16 go to. That's what CLV goes to. How is the intersection,
17 as a whole, operating. And a good example of that is at the
18 intersection of Layhill and Georgia Avenue, that little side
19 street that's in the community.

20 That is suppressed in terms of its time for a
21 couple of reasons. One, the volume is so low that's coming
22 out of that location. Some signal cycles, you may not even
23 have a car coming out and you have to set minimum timings
24 when you go around an intersection. You don't want to
25 allocate too much time for something that's going to be

1 sitting vacant but you also don't want to set up a system
2 whereby you're creating a shortcut, for somebody from
3 Randolph Road to cut through neighborhoods to come out at
4 this location to avoid a major intersection of Randolph and
5 Georgia Avenue.

6 So there are reasons why the state or the DOT,
7 Montgomery County's Department of Transportation is going to
8 set signal timing such that a particular movement or a
9 particular leg of an intersection may experience capacity or
10 even overcapacity, quote unquote, an F. That does not mean
11 that the intersection as a whole fails. And you could see
12 in some of the examples that were given, you had As and B
13 levels of service on the main line. That's telling us that
14 they are giving way too much time to the main line and not
15 enough time for the side street and that they should be
16 reallocating that time, which is again part of the
17 interchange project as it has been made.

18 They typically want the main line to run at Cs and
19 Bs and give more time to the side street when they can, but
20 they don't want to set it up in such a way that you've
21 created a cut-through or you haven't given the majority of
22 traffic priority which is what they will do.

23 MS. ROBESON: Okay.

24 BY MR. ROBINS:

25 Q So what do you think the impact is of a

1 grade-separated interchange, not only at Georgia and
2 Randolph but the road network itself?

3 A I believe that the interchange is going to solve
4 many of the issues and experiences that the neighbors have
5 at this location. It is, however, in a Metro Station policy
6 area. This does not mean that it is going to work like it
7 is out in a rural area. It is a tied system and it's
8 interconnected when congestion is expected.

9 MS. ROBESON: Because it's over 1, it's at 1800
10 CLV.

11 THE WITNESS: That's correct. And they expect and
12 anticipate congestion. And the most current guidelines
13 clearly state that they expect congestion in a Metro Station
14 Policy Area. If you didn't have congestion, you have no
15 need for public transportation. If everything in the County
16 operated at B level of service, there would be no reason for
17 somebody to get on a bus or to take Metro.

18 BY MR. ROBINS:

19 Q Okay. But in your opinion, do you believe that
20 the grade-separation, with the grade-separated interchange,
21 that the traffic conditions will be compatible with the
22 surrounding area?

23 A Absolutely. And they will be better.

24 MS. ROBESON: Okay.

25 BY MR. ROBINS:

1 Q Let me ask you just a few more questions. Just
2 Mr. Kauffunger asked Mr. Axler about WMATA study that Mr.
3 Kauffunger had submitted, I think it's Exhibit 195.

4 A Yes.

5 Q In your direct testimony, I believe that you had
6 addressed the issue regarding the distribution of trips --

7 A Yes.

8 Q -- as it related to Mr. Hedberg's original study,
9 but I'd like you just to, just briefly address that one more
10 time.

11 A Yeah.

12 Q And I believe you also submitted, isn't this
13 correct, an Exhibit 196 that took into consideration the --

14 A Yes.

15 Q -- trips that had not been included?

16 A That, that is correct. And I -- Mr. Hedberg had
17 not been provided the two pages that were important out of
18 that document. He had been provided only one, the new trips
19 to that particular garage but not the redistribution of
20 existing trips.

21 MS. ROBESON: Right.

22 THE WITNESS: In that redistribution, there are
23 numbers that will be added to the driveway but there will be
24 numbers that will be subtracted from other movements because
25 they shifted over to this --

1 MS. ROBESON: Right. The southbound left.

2 THE WITNESS: Exactly. The southbound left and
3 the southbound through.

4 MS. ROBESON: Okay.

5 THE WITNESS: So and in the northbound direction
6 as well.

7 MS. ROBESON: Right.

8 THE WITNESS: There were subtractions around the
9 network. Mr. Hedberg did not take into consideration those
10 subtractions around the network or at this particular
11 intersection. When we ran the CLV at this location, it was
12 a nominal change. It, you know, one went up, I believe one
13 peak hour went up, one went down or it was a nominal one or
14 two critical lane vehicles. It was, it was non-crux.
15 Because of the through-movement subtraction, the left-turn
16 subtraction and the northbound subtraction, so there was
17 really no change. In the p.m. peak hour, it actually
18 produces in that northbound left.

19 So if those things had been taken into
20 consideration in HCM, I would not expect the HCM to change.
21 It could possibly get better but more importantly, it would
22 have gotten better at several other intersections because
23 there would have been subtractions from other intersections
24 along the Georgia Avenue corridor.

25 BY MR. ROBINS:

1 Q And what would the impact be on the queuing?

2 A There was no problem at the queuing at this
3 particular intersection. There was no problem with queues
4 on Glenallen. The next signalized intersection was at
5 Layhill. We didn't have queues that exceeded that distance
6 and we did not have queues that exceeded distances on either
7 northbound or southbound Georgia Avenue at Glenallen. So I
8 would not, I would not expect this to affect any of those
9 queues.

10 Q I believe you also provided some analysis to the
11 Hearing Examiner, and this is also along the questioning
12 that Mr. Kauffunger had asked Mr. Axler about, about the
13 impact of certain amount of units at the Privacy World being
14 vacant.

15 A Right.

16 Q Can you just briefly describe --

17 A Yeah.

18 Q -- your take on that particular issue?

19 A Yes. Again, there was, we created a trip
20 generation table which showed that there were going to be,
21 it would have added about 57 I believe the number was, 57
22 additional trips. I think that was in the P&P Power. By
23 the time you dispersed that over the road network, it was
24 not going to affect any of the intersections. If you took
25 all 57 trips and added those to the Critical Lane Volume

1 which clearly, not all 57 are going to be in the critical
2 movement in any one of these intersections let alone all of
3 them, if you were to add that, it still does not create a
4 situation where any intersection would fall above or rise
5 above the 1800 critical lane standard, particularly when
6 you're taking into consideration the grade separated
7 interchange at Randolph Road and Georgia Avenue.

8 MS. ROBESON: And what about the queue?

9 THE WITNESS: Again, the dispersion of all of
10 this, by the time you have dispersed it on the road network
11 and gotten it out, as an example, at Georgia and Layhill, if
12 they're on Layhill Road, the volume that that would add
13 would probably be less than a single vehicle in a signal
14 cycle.

15 MS. ROBESON: I see.

16 THE WITNESS: Okay. Because the queue is based
17 not on what is it, what is approaching in that one hour but
18 all signal cycles. How many cars are you adding to a single
19 signal cycle. By the time you did that, it's probably going
20 to be less than one vehicle, and there are two lanes for
21 those lights. And those two lanes extend all the way back
22 to the next intersection.

23 MS. ROBESON: Okay.

24 THE WITNESS: It's not like there's a double left
25 and it's a short double left. Those lanes extend all the

1 way back to the intersection of Glenallen and Layhill.

2 MS. ROBESON: Okay.

3 BY MR. ROBINS:

4 Q And as far as signal timing is concerned, can
5 signal timing optimization really make a difference?

6 A Yes, it can. Yes, it can. And there's already an
7 example of that which we discovered when we went out and did
8 the recount in 2011 and we did the queues at that
9 intersection. And what we found is that the queue had been
10 reduced in the southbound direction.

11 MS. ROBESON: Is that the Georgia and Layhill?

12 THE WITNESS: Yes. Georgia and Layhill. That was
13 the queue that --

14 MS. ROBESON: Now which, are you looking at the
15 westbound Layhill queue or the southbound Georgia queue?

16 THE WITNESS: Southbound Georgia. If you go back
17 to the 2008 analysis, the southbound Georgia Avenue was --

18 MS. ROBESON: Was the problem.

19 THE WITNESS: -- was the problem intersection and
20 so staff, in asking us to update and take a look at whether
21 or not there had been any change, not only did they want us
22 to recount the volume, redo the CLV, but they also asked us
23 to redo the queue at that particular intersection because
24 they knew that Georgia Avenue was not going to be an issue
25 because funding had already occurred, so the queues were

1 going to go away with the funding of the interchange.

2 But this intersection, which is downstream, they
3 wanted to make sure that that queue had not increased over
4 time and what we discovered when I saw that queue, it had
5 dropped significantly. We went back out, counted it again
6 and found that it was still as low as it was the first time.
7 Then we called and found that they had in fact changed the
8 timing of that intersection.

9 MS. ROBESON: Okay.

10 THE WITNESS: Somewhere between 2008 and 2011,
11 they couldn't give me a date as to when exactly they
12 implemented that time change.

13 BY MR. ROBINS:

14 Q And what was the purpose, again, of the 2011
15 study?

16 A The 2011 study was merely to make sure that
17 conditions from 2008 had not changed in 2011. What we
18 found, obviously, doing the counts, the CLV and the queues,
19 but those conditions remained the same or better than what
20 they were in 2008.

21 Q And again, just reiterating, do you believe that
22 the granting of these applications will be compatible with
23 the surrounding area?

24 A Yes, I do.

25 Q These zoning applications from a transportation

1 point of view?

2 A Yes, I do.

3 Q And do you believe that the applications will
4 create a situation where there will really be no adverse
5 impacts on the surrounding area, particularly with the
6 grade-separated interchange in place?

7 A Particularly with the grade-separated interchange
8 in place, with all that comes with that, I believe that this
9 project will not have adverse impact on the area roads.

10 Q Do you believe the project is in the public
11 interest?

12 A I do.

13 MR. ROBINS: And I think that's it.

14 MS. ROBESON: Okay. Before I turn it over for
15 cross-examination, I just, Mr. Afzal and Mr. Axler, you have
16 been excused so you don't have to stay unless you want to.
17 You don't have to stay for the whole, the remainder so
18 that's, whatever you prefer to do. I didn't make that
19 clear.

20 (Discussion off the record.)

21 MS. ROBESON: Mr. Kauffunger, do you have any
22 questions for Ms. Randall?

23 MR. KAUFFUNGER: Sure.

24 REBUTTAL CROSS-EXAMINATION BY MR. KAUFFUNGER

25 BY MR. KAUFFUNGER:

1 Q Now I'm referring to page 187.

2 MS. ROBESON: Of?

3 MR. KAUFFUNGER: Something I was looking at. Of
4 the 147(f), the technical appendix.

5 MS. ROBESON: Okay.

6 BY MR. KAUFFUNGER:

7 Q On the queue length, this is future total growth
8 with a.m. peak hour with, well, this one without the grade
9 separation. It has a queue length for westbound left of 628
10 feet and the westbound-throughs of 848. If these queues
11 were actually that long, wouldn't they block the entrances
12 and access to the proposed development?

13 A This is at the intersection of Randolph Road and
14 197 so --

15 Q Yes.

16 A -- no, it would not block access to the
17 development.

18 Q Oh, I'm sorry. No, okay. You're right. Yes.
19 I've got myself --

20 MS. ROBESON: You're looking for Glenallen?

21 MR. KAUFFUNGER: Yeah. I got myself -- yeah.
22 Okay. I was thinking it was Glenallen.

23 MS. ROBESON: I think that's 188. Oh, no. That's
24 Glenallen and Layhill.

25 MR. KAUFFUNGER: No. No. Glenallen and Georgia

1 is not an intersection that they did a queue analysis for.
2 They only did queuing analysis on three intersections.

3 MR. ROBINS: No. That's not --

4 MR. KAUFFUNGER: Are you saying they didn't?

5 MS. ROBESON: I saw it here.

6 MR. KAUFFUNGER: Well --

7 MS. ROBESON: Oh, no. 2. It's intersection 2 on
8 page 10 of 147(e) which is this I think.

9 MR. KAUFFUNGER: Yeah, but that's using the LATR.
10 I'm talking about the HCM queuing analysis using Synchro.

11 MS. ROBESON: Oh.

12 MR. KAUFFUNGER: They only did three
13 intersections.

14 BY MR. KAUFFUNGER:

15 Q Correct?

16 A Uh-huh.

17 MR. KAUFFUNGER: Now I have lost myself there.

18 MS. ROBESON: I helped you.

19 MR. KAUFFUNGER: Yes.

20 MS. ROBESON: Okay. Any other questions?

21 BY MR. KAUFFUNGER:

22 Q Now I'm going to just look at two more of these
23 queuing things. Okay. If you could turn to page 200 in
24 147(f), and this is again, this is the a.m. peak hour but
25 with the grade separation in place.

1 A Uh-huh.

2 Q The eastbound-through --

3 A Uh-huh.

4 Q -- shows the 95th percentile, it shows a queue
5 length of 624 feet. Again, doesn't, wouldn't that start to
6 effectively block traffic going into the subject site and
7 from the, the subject site?

8 A It's possible. Again, this is a theoretical
9 queue. This is the 95th percentile queue so five percent of
10 the time, the queue may this length or longer. The rest of
11 the time, it would be shorter. And we are recommending, as
12 we have indicated through doing the operational analyses, we
13 are recommending road improvements to effectively --

14 MS. ROBESON: The lane changes.

15 THE WITNESS: -- lane changes to effectively
16 reduce the queues on this roadway.

17 BY MR. KAUFFUNGER:

18 Q On Glenallen?

19 A Yes.

20 Q How would you do that?

21 MS. ROBESON: That was what she testified to the
22 last time, that she was going to make two left-hand turns I
23 think.

24 THE WITNESS: And a through-right and --

25 BY MR. KAUFFUNGER:

1 Q We're talking about -- okay. But didn't you build
2 it in? I thought, I understood that you, but it doesn't
3 show here.

4 MS. ROBESON: Did you build it into this --

5 THE WITNESS: No.

6 MS. ROBESON: -- these results?

7 THE WITNESS: No. What -- again, we had not
8 optimized any of the signals through this system.

9 MS. ROBESON: Right.

10 THE WITNESS: Okay? And that's part of why we
11 think it's a good idea to do this operational analysis so
12 that we can show one, take a look at these lane use changes,
13 take a look at some of the parking issues but also, take a
14 look at the overall timing at these community intersections,
15 for lack of a better description.

16 MS. ROBESON: Right.

17 MR. KAUFFUNGER: Okay. That's -- I'm finished.
18 Thank you.

19 MS. ROBESON: Okay. Anyone else?

20 MR. KAUFFUNGER: Ms. Vergagni?

21 MS. ROBESON: No? Okay.

22 MR. BRONSTEIN: I've got a couple of questions.

23 REBUTTAL CROSS-EXAMINATION BY MR. BRONSTEIN

24 BY MR. BRONSTEIN:

25 Q We have been hearing -- first, let me just say

1 that I am enjoying Ms. Randall's testimony. She's very good
2 at what she does here. A traffic engineer, am I correct?

3 A Transportation planner.

4 Q Transportation. You're not an engineer.

5 A No, I am not.

6 Q Okay. But you're a transportation consultant, is
7 that --

8 A Planner.

9 Q What?

10 A Planner. I'm a professional transportation
11 planner certified by ITE, Institute of Transportation
12 Engineers. I'm also AICP, American Institute of Certified
13 Planners.

14 Q And I always find it interesting, I haven't been
15 in 100 hundred hearings like Dick has but in all the
16 hearings I've been in, it's always interesting to me that
17 the consultants always agree with the applicant. But in any
18 event, when you spoke of optimizing and retiming signals, is
19 it possible that without doing anything other than retiming
20 and optimizing the signal times and the sequences and what
21 have you, that we can eliminate the problems in that general
22 area of Georgia/Randolph/Layhill/Glenallen?

23 A Well, clearly, the interchange is a lot more than
24 just optimizing the signal. Changing how much time is
25 allocated for the eastbound and the westbound-through frees

1 up a tremendous amount of green time that would otherwise be
2 allocated to those movements. They are going to be making
3 significant improvements to that intersection that carry
4 down Randolph Road both east and west and providing service
5 lanes on the side. So this frees up a tremendous amount of
6 capacity that would have otherwise been allocated to turning
7 volume, local turning volume as well as the through
8 movements that are there.

9 That then, because this is part of a system, a
10 traffic signal system, it frees up time for all of the
11 movements because they are, we're tuning volume going down
12 Georgia Avenue and the same with Randolph Road. They set
13 those times in order to make sure that you don't have
14 backups that would lead back into the next intersection.
15 And by freeing this up, it allows for that progression. It
16 allows for better progression along the entire system. It
17 means the side street can be given more green time which
18 right now, it cannot.

19 Q So getting back to my question, retiming and
20 optimizing the signals wouldn't solve the problems in that
21 network.

22 A If you went out today and retimed some of these
23 signals, it would help. You know, I can't say that you
24 couldn't go and retime any one of these and take a look at
25 the system and if somebody wanted to go out and do that,

1 they certainly could but the system itself, based on our
2 analysis for 2008 conditions and the 2011 conditions, are
3 working well within the standard.

4 Q So that do we really need to spend \$60 million on
5 the grade separation?

6 MS. ROBESON: Well, I don't think that's for Ms.
7 Randall to say. I think that's the --

8 MR. BRONSTEIN: She just said she's a
9 transportation planner and consultant.

10 MS. ROBESON: Yes, but that was not the scope of
11 her report. The scope of her report -- the County Council
12 makes that judgment.

13 MR. BRONSTEIN: Okay. Well, let's skip that
14 question. I have others.

15 MS. ROBESON: Okay.

16 MR. BRONSTEIN: Okay? Thank you.

17 BY MR. BRONSTEIN:

18 Q Do you feel, based on your experience and
19 observations, that the traffic in general is going to
20 increase in that area?

21 A I, I can't say that with any certainty, no.

22 Q You think -- well, let me put it another way. Do
23 you think the traffic volume will decrease in, let's say for
24 the next three years in that area of Georgia and Randolph,
25 in that network of roads?

1 A Based on the volume data that we have for 2006,
2 2008 and 2011, the volume is trending downward.

3 Q Okay. And do you think that downward trend has
4 any connection to the economy?

5 A I think it has to do with probably three or four
6 different factors, not just the economy.

7 Q And when the economy let's say goes back up to say
8 2006 levels, will there be an appreciable increase in
9 traffic volume?

10 A I don't know that.

11 Q Okay. And I'm assuming you feel yourself to be --
12 MS. ROBESON: I don't know if it's ever going back
13 to 2006.

14 MR. BRONSTEIN: Well, the cars are getting
15 smaller.

16 BY MR. BRONSTEIN:

17 Q I'll just read as a preamble to my question. The
18 remand Resolution 16-24 dated January 15th, '08. The
19 District Council is persuaded that in these cases, still the
20 analysis failed to adequately assess traffic conditions at
21 Georgia/Randolph even assuming that its flaws are not enough
22 to undercut its finding. The LATR study, LATR study
23 included the intersection of Georgia and Randolph operates
24 at an acceptable level currently and will continue to do so
25 with the proposed development and associated at-grade

1 improvements to Georgia Avenue.

2 Yet, testimony from Mr. Hedberg and community
3 members supported by Mr. Kauffunger's photographs and upon
4 refuted by any contrary evidence establishes that under
5 current conditions, the intersection is heavily congested
6 and is not operating in a manner that any reasonable person
7 would consider acceptable. So it views the CLV test and the
8 high level of allowing 1800 CLV numbers there, they find
9 that reality of this statement --

10 MR. ROBINS: Question.

11 MR. BRONSTEIN: I'm getting to it. Be patient,
12 Mr. Robins. Thank you.

13 BY MR. BRONSTEIN:

14 Q Establishes under --

15 MS. ROBESON: Mr. Bronstein, you really do need to
16 ask a question.

17 MR. BRONSTEIN: Okay.

18 BY MR. BRONSTEIN:

19 Q The question is, you know, in light of what I'm
20 just reading, which is the District Council's, part of the
21 District Council's remand, it seems to say that CLV and the
22 LATR really don't, don't reflect reality. Would you agree
23 or disagree?

24 A I would disagree with your statement?

25 Q And why? Not my statement. I just read the

1 remand statement.

2 A No. Your interpretation of that.

3 Q I only read it.

4 MR. ROBINS: No.

5 BY MS. ROBESON: Okay. That's what they call
6 argumentative. You can't argue with the witness if you
7 disagree, okay? So can you think of another way to ask it?
8 I mean, we've been through sort of the things saying that
9 the HCM and the CLV, that not all these things are perfect
10 so do you have a direct question for her?

11 MR. BRONSTEIN: I'm finished. Thank you.

12 MS. ROBESON: Okay. Anyone else? Ms. Vergagni,
13 do you have any questions?

14 MS. VERGAGNI: No.

15 MS. ROBESON: Okay. Do you have any redirect?

16 MR. ROBINS: We don't.

17 MS. ROBESON: Okay. All right. Then are you,
18 since we're all here, are you prepared for closing
19 statements today or -- okay. Then I'll have closing
20 statements from both of you next Monday. Yes?

21 MR. KAUFFUNGER: I can't, I couldn't possibly do
22 it this week.

23 MR. ROBINS: You know, we can and I have to say
24 that we've been, in our opinion, very cooperative in terms
25 of trying to accommodate timing, given delays, but we have

1 concerns about timing of our own and really, I was going to
2 suggest Friday.

3 MS. ROBESON: Yes, sir.

4 MR. BRONSTEIN: The applicant is the party that
5 delayed this proceeding first at five years. At this point,
6 to say they need five more days or to take away five days
7 from those who make a respectable and reasonable comment,
8 that for, you know, I have another life and all of us do, to
9 take say to the 30th I think would be fair to ask for
10 closing statements.

11 MS. ROBESON: That's -- I don't think they're that
12 necessary. I don't think the 30th is appropriate. I'll set
13 them for let's see, Monday would be the 23rd. I'll set them
14 for the 25th and then if you want to respond to whatever is
15 filed, and that should be Wednesday.

16 MR. ROBINS: Can I just --

17 MS. ROBESON: Yes.

18 MR. ROBINS: I would just say that, and I probably
19 won't have any sway with this but I would just say that we
20 already, before the --

21 MS. ROBESON: I know what you're going to say.

22 MR. ROBINS: You do?

23 MS. ROBESON: You're going to say that we found
24 Mr. Kauffunger's request the day that statements were due
25 and therefore --

1 MR. ROBINS: Well, it wasn't exactly the day that
2 statements were due but when the hearing was essentially
3 finished the last go-around --

4 MS. ROBESON: Yes. I understand.

5 MR. ROBINS: -- we set a briefing schedule or a
6 closing argument schedule that was then interrupted by the
7 reopening of the record to deal with this issue.

8 MS. ROBESON: Yes. I remember that.

9 MR. ROBINS: So but there was enough time that
10 people were clearly on -- we were thinking about it, I'm
11 sure Mr. Kauffunger and others were thinking about what they
12 want to say in their closing statement so that we were
13 hopeful that, and I believe I even made this comment when we
14 discussed this concept of bringing Mr. Axler back, that the
15 closing statements wouldn't be delayed.

16 MS. ROBESON: Well, they had to have been delayed
17 anyway.

18 MR. ROBINS: I meant delayed, delayed in terms of
19 tacking on a significant amount of additional time.

20 MS. ROBESON: I tacked on nine days. You want
21 seven days?

22 MR. ROBINS: Anything that would be --

23 MS. ROBESON: Mr. Kauffunger.

24 MR. KAUFFUNGER: I didn't reveal why I couldn't do
25 it but my daughter-in-law who lives here and I do backup

1 babysitting for, okay, is due to have her baby this week,
2 okay, as well as the fact that this coming weekend, another
3 big family gathering because of my granddaughter's shower.
4 She's from North Carolina. The shower, and we have incoming
5 guests. I mean, I have lots and lots of personal stuff --

6 MS. ROBESON: Okay.

7 MR. ROBINS: I'm going to --

8 MR. KAUFFUNGER: -- that interferes.

9 MR. ROBINS: I'm going to --

10 MR. KAUFFUNGER: And I know that it doesn't
11 matter, but --

12 MR. ROBINS: Dick. Dick, stop. I'm going to put
13 an end to this. We'll go with the 25th.

14 MS. ROBESON: 4/25. Now, do you want to waive
15 your right to a supplemental response?

16 MR. ROBINS: No. I'd still like to have the
17 opportunity.

18 MS. ROBESON: So that would be the following
19 Monday.

20 MR. ROBINS: That's fine. Yeah. I mean, let's
21 see. 4/25.

22 MS. ROBESON: 4/30. Is that the following --

23 MR. ROBINS: Yeah. Let me, if I could ask you,
24 I'll need, I may need -- if you could do that say April 1st.
25 May 1st rather.

1 MR. KAUFFUNGER: Well, wait a second. Everything
2 needs to be rushed.

3 MS. ROBESON: Mr. Kauffunger, I'm not going to
4 delay the case anymore.

5 MR. KAUFFUNGER: Okay. 4/25 is the closing. And
6 May --

7 MR. ROBINS: And then May 1st I would just ask,
8 I've got --

9 MS. ROBESON: Written closing argument. And then
10 you have until May 1st.

11 MR. ROBINS: Perfect.

12 MS. ROBESON: So I gave you two days and him one
13 day, okay, and no more. It's not going to reopen. And the
14 only thing it's open for, it's not open for any letters of
15 support or any further exhibits. It's only open for the
16 closing statements. Yes.

17 MR. ROBINS: There is one exhibit that does need
18 to be submitted, we talked about this last time, which was
19 the revised development plan to include the operational
20 binding element.

21 MS. ROBESON: That's correct, so --

22 MR. KAUFFUNGER: Wait a second. What is the
23 operational binding element?

24 MR. ROBINS: It was exhibit, I don't have the
25 exhibit list in front of me.

1 MS. ROBESON: They proposed a binding --

2 MR. ROBINS: It was talking about Glenallen
3 Avenue, Dick.

4 MR. KAUFFUNGER: That's after you left?

5 MR. ROBINS: I'm not sure it was.

6 MR. O'NEAL: It might have been.

7 MS. RANDALL: It might have been.

8 MS. VERGAGNI: It was after he left.

9 MR. AXLER: But we sent it around before.

10 MS. VERGAGNI: It was to do a study.

11 MR. ROBINS: It was to --

12 MR. BRONSTEIN: Could we get a copy to look at?

13 MR. O'NEAL: All right. Yes. That's my only
14 copy.

15 MR. BRONSTEIN: Can Dick have a minute to look at
16 it, Ms. Robeson?

17 MS. ROBESON: He may.

18 MR. KAUFFUNGER: You know, one of the things that
19 -- you know, we get into these races and everything has to
20 be done. I made the request a number of times of different
21 people in the applicant's group by either getting the
22 development plan that we had up until now with the binding
23 elements and never could get it.

24 MR. ROBINS: I don't know what you're talking
25 about.

1 MR. KAUFFUNGER: Now, I didn't, I didn't submit it
2 in writing. I guess so I --

3 MS. ROBESON: Well, I know you've been to look at
4 our file and it's in our file. Now, I don't have a -- what
5 he's saying is that he, the applicant proposed another
6 binding element at the last hearing relating to operations.
7 And he said should I submit that in the form of the
8 development plan, and I recommended that he wait until Mr.
9 Axler's finished so we know what we're dealing with but I
10 know it's in the record.

11 MR. ROBINS: You're talking about the actual
12 language of the binding element?

13 MS. ROBESON: Yes.

14 MR. ROBINS: Yes. That's --

15 MS. ROBESON: That came into the record at the
16 last hearing.

17 MR. ROBINS: Yes, it did. It was Exhibit 199 is
18 what I have it marked down as.

19 MS. ROBESON: And so that, what he's saying, what
20 Mr. Robins -- yes. It's here. So we're going to have, the
21 only thing that the record is open for is the revised
22 development plan with all the binding elements that you're
23 proposing.

24 MR. ROBINS: Right.

25 MS. ROBESON: So that's what goes to the County

1 Council.

2 MR. ROBINS: And I also made a correction on the
3 right-of-way width for Glenallen, that was in the record
4 too, from 95 to 90.

5 MS. ROBESON: Yes. You're right.

6 MR. ROBINS: That Ms. Randall testified to.

7 MR. KAUFFUNGER: Would I be sent a copy of that?

8 MS. ROBESON: Well --

9 MR. KAUFFUNGER: The revised development plan with
10 all of these, this language?

11 MR. ROBINS: Sure. Absolutely. We'll get you a
12 copy.

13 MS. ROBESON: Yes. Okay. So the only thing the
14 record is open for is the schematic development plan with
15 the changes of the additional binding element and the right-
16 of-way, and then closing statements on April 25th and then
17 any supplemental response from the applicant on April, May
18 1st, okay? And we are adjourned.

19 (Whereupon, at 2:52 p.m., the hearing was
20 concluded.)

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% Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Glenmont Layhill Associates

Case No. G-862/G-863

By:

Josephine Hayes

Josephine Hayes,
Transcriber